

CHAPTER 1**(SJR 16)**

A JOINT RESOLUTION naming Interstate 65 in Jefferson County in honor and memory of Dr. Martin Luther King, Jr.

We pause to honor the memory of one of the greatest
humanitarians of this century, Dr. Martin Luther King, Jr.

WHEREAS, born on Tuesday, January 15, 1929, at his family's home in Atlanta, Georgia, Martin Luther King, Jr., was the second child but first son born to the Reverend Martin Luther King, Sr., and Alberta Williams King; and

WHEREAS, a brilliant child, Dr. Martin Luther King, Jr., skipped both the ninth and twelfth grades, and due to his high scores on college entrance examinations, he entered Morehouse College at the age of fifteen without formally graduating from high school; and

WHEREAS, graduating from Morehouse College in 1948 with a Bachelor of Arts degree in Sociology, Dr. Martin Luther King, Jr., earned a Bachelor of Divinity degree from Crozer Theological Seminary in Pennsylvania in 1951, while also taking classes at the University of Pennsylvania; and

WHEREAS, in the fall of 1951 Dr. Martin Luther King, Jr., began doctoral studies in Systematic Theology at Boston University and he was awarded his Ph.D. degree in 1955, all the while studying at Harvard University; and

WHEREAS, on June 18, 1953, Dr. Martin Luther King, Jr., married his soul mate Coretta Scott; and

WHEREAS, between November 17, 1955, and March 28, 1963, Dr. and Mrs. Martin Luther King, Jr., became the proud parents of four children, Yolanda Denise, Martin Luther III, Dexter Scott, and Bernice Albertine; and

WHEREAS, Dr. Martin Luther King, Jr., actually entered the ministry and was ordained in February 1948 at the age of nineteen at the Ebenezer Baptist Church in his hometown of Atlanta, Georgia; and

WHEREAS, upon graduation from Boston University, Dr. Martin Luther King, Jr., was called to be the Pastor of the Dexter Avenue Baptist Church in Montgomery, Alabama; and

WHEREAS, while shepherding the flock of Dexter Avenue Baptist Church, Dr. Martin Luther King, Jr., was thrust into the firestorm of hatred that existed throughout America, and which was especially violent in the southern states, by being one of the pivotal figures who started what became known throughout the world as the "Civil Rights Movement" when he was elected President of the Montgomery, Alabama, Improvement Association; and

WHEREAS, Dr. Martin Luther King, Jr., spearheaded the Montgomery Improvement Association's famous boycott of the city's bus system, a boycott that lasted 381 days at great personal sacrifice, hardship, and persecution to the many citizens who stood behind Dr. King's dream of equality for all men and women, regardless of the color of their skin or their station in life; and

WHEREAS, the Montgomery bus boycott resulted in judicial systems across the nation beginning to strike down segregationist legislation as unconstitutional, and it also vaulted the civil rights movement, and Dr. Martin Luther King, Jr., into the forefront of American politics and social debate; and

WHEREAS, in 1959 Dr. Martin Luther King, Jr., resigned as pastor of Dexter Avenue Baptist Church to return to Atlanta to spearhead the civil rights work of the Southern Christian Leadership Conference; and

WHEREAS, on December 10, 1964, Dr. Martin Luther King, Jr., received the most prestigious award bestowed by the international community when at the age of 35 he was awarded the Nobel Peace Prize; and

WHEREAS, Dr. Martin Luther King, Jr., was the youngest man, second American, and only the third black man to be awarded the Nobel Peace Prize; and

WHEREAS, a cowardly assassin's bullet ended Dr. Martin Luther King, Jr.'s life on April 4, 1968, while he was in Memphis, Tennessee, to help lead sanitation workers in a protest against low wages and intolerable working conditions; however, the bullet that robbed Dr. King of his life could never silence his message of love, faith, truth, peace, and brotherhood for all the people of the earth; and

WHEREAS, Dr. Martin Luther King, Jr., remains one of the most recognized individuals of this century, and during his brief life, in addition to the 1964 Nobel Peace Prize, he received the following awards: in 1957 he was selected as one of the ten most outstanding personalities of the year by Time Magazine, was listed in Who's Who in

America, received the National Association for the Advancement of Colored People's Spingarn Medal, and received the Russwurm Award from the National Newspaper Publishers; in 1958 he received the Second Annual Achievement Award from the Guardian Association of the New York Police Department; in 1959 he was selected as one of the sixteen world leaders who contributed most to the advancement of freedom during 1959 by Ling Magazine of New Delhi, India; in 1963 Dr. King was named Time Magazine's "Man of the Year," and was named "American of the Decade," by the Laundry, Dry Cleaning, and Die Workers International Union; in 1964 in addition to the Nobel Peace Prize, Dr. King received the John Dewey Award from the United Federation of Teachers and the John F. Kennedy Award from the Catholic Interracial Council of Chicago; in 1968 he was presented posthumously the Marcus Garvey Prize for Human Rights by the Jamaican Government and the Rosa L. Parks award by the Southern Christian Leadership Conference; and he received the Aims Field-Wolf Award for his book *Stride Toward Freedom*; and

WHEREAS, recognized for his work throughout the world, Dr. Martin Luther King, Jr., was bestowed the following honorary degrees: Doctor of Humane Letters, Morehouse College; Doctor of Laws, Howard University; Doctor of Divinity, Chicago Theological Seminary; Doctor of Laws, Morgan State University; Doctor of Humanities, Central State University; Doctor of Divinity, Boston University; Doctor of Laws, Lincoln University; Doctor of Laws, University of Bridgeport; Doctor of Civil Laws, Bard College; Doctor of Letters, Keuka College; Doctor of Divinity, Wesleyan College; Doctor of Laws, Jewish Theological Seminary; Doctor of Laws, Yale University; Doctor of Divinity, Springfield College; Doctor of Laws, Hofstra University; Doctor of Humane Letters, Oberlin College; Doctor of Social Science, Amsterdam Free University; Doctor of Divinity, St. Peter's College; Doctor of Civil Law, University of Newcastle Upon Tyne; and Doctor of Laws, Grinnell College; and

WHEREAS, in addition to raising his family, ministering to his church family, working with the Southern Christian Leadership Conference, and his many national and international activities for peace and justice, Dr. Martin Luther King, Jr., wrote six books and numerous articles; and

WHEREAS, Dr. Martin Luther King Jr.'s skills as an orator helped raise the consciousness of not only this nation, but the entire world, during several of his most famous speeches including his "I have a dream" speech in 1963 during the civil rights movement March on Washington, his 1964 acceptance speech of the Nobel Peace Prize, and his final sermon "I have been to the Mountaintop" given the day before his death in Memphis; and

WHEREAS, Dr. Martin Luther King, Jr., is entombed on Freedom Plaza in Atlanta, Georgia -- a 23-acre site that was listed as a National Historic Landmark on May 5, 1977, and made a National Historic Site on October 10, 1980; and

WHEREAS, on January 18, 1986, following passage of Public Law 98-144, America paid final homage to this great American by proclaiming the third Monday in January of each year a public holiday in honor of the birthday of Dr. Martin Luther King, Jr.;

NOW, THEREFORE,

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

Section 1. The members of the General Assembly, both individually and collectively, hail Dr. Martin Luther King, Jr., for his sacrifices and devotion to equality and justice for every citizen of every nation.

Section 2. The Commonwealth of Kentucky wants to add to the many accolades Dr. Martin Luther King, Jr., has received by naming one of the busiest highways in the state in his memory.

Section 3. The Transportation Cabinet is directed to name Interstate 65 in Jefferson County the "Dr. Martin Luther King, Jr., Expressway."

Section 4. The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at the Kentucky/Indiana state line, the Jefferson County/Bullitt County line, and at intervals in between that read "Dr. Martin Luther King, Jr., Expressway."

Approved March 2, 2007

CHAPTER 2

(HB 468)

AN ACT relating to economic development and declaring an emergency.

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

Section 1. KRS 154.24-090 is amended to read as follows:

The authority shall promulgate administrative regulations in accordance with KRS Chapter 13A, regarding the approval of eligible companies and economic development projects conducted by those companies. The criteria for approval of eligible companies and economic development projects shall include but not be limited to the following criteria:

- (1) A determination by the authority that more than seventy-five percent (75%) of services provided by the eligible company from the proposed project shall be provided for persons located outside the Commonwealth during each year of the period during which it receives inducements as authorized in KRS 154.24-110;
- (2) The economic development project shall result in the creation by the eligible company of a minimum of fifteen (15) new full-time jobs for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth at the activation date set forth in the company's service and technology agreement as described in KRS 154.24-120. The activation date shall occur within two (2) years after the date of the final resolution authorizing the economic development project. The authority may extend the period for compliance with this subsection up to one (1) year from the activation date upon the written application of an eligible company requesting an extension;
- (3)
 - (a) Within six (6) months after the activation date, the approved company shall compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created with base hourly wages equal to either:
 1. Seventy-five percent (75%) of the average hourly wage for the Commonwealth; or
 2. Seventy-five percent (75%) of the average hourly wage for the county in which the project is to be undertaken.
 - (b) If the base hourly wage calculated in subparagraph (a)1. or (a)2. of this subsection is less than one hundred fifty percent (150%) of the federal minimum wage, then the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage.
 - (c) In addition to the base hourly wages, the eligible company shall provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wages; however, if the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wages, the eligible company may qualify under this section if it provides the employees hired by the eligible company as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the applicable base hourly wages through increased hourly wages combined with employee benefits;
- (4) ***If an eligible company receives approval from the authority before July 1, 2008, and locates an economic development project on property that adjoins one of the five (5) regional postsecondary education centers operated and occupied in cooperation with the Kentucky Community and Technical College System, or operated and occupied under the combined efforts of the Kentucky Community and Technical College System and a public four (4) year regional university, the eligible company may alternatively satisfy the requirements of subsection (3) of this section in the following manner:***
 - (a) ***Within six (6) months after the activation date, the approved company shall compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created as a result of the project with total of base hourly wages plus employee benefits equal to or greater than two hundred percent (200%) of the federal minimum wage, providing that base hourly wages shall be greater than or equal to one hundred fifty percent (150%) of the federal minimum wage;***
 - (b) ***The eligible company shall provide to the authority a statement certifying that the eligible company will seek to provide full-time or part-time employment opportunities for nontraditional students who are enrolled or seek to be enrolled at a regional postsecondary education center; and***
 - (c) ***The director of the regional postsecondary education center shall provide to the authority a statement asserting that the eligible company is likely to provide appropriate employment opportunities for students and that the economic development project may be reasonably expected to provide meaningful opportunities for technological and infrastructural enhancements;***
- (5) Written evidence that:

- (a) Approval of the economic development project and the resulting inducements to be offered are essential to the creation of new jobs in the Commonwealth by an eligible company in connection with its economic development project; and
 - (b) No significant number of existing jobs in the Commonwealth will be lost, or adversely affected, due to the designation of an eligible company as an approved company, and to the approval of the eligible company's economic development project; and
- ~~(6)(5)}~~ That the economic development project could reasonably and efficiently locate outside of the Commonwealth and, without the inducements offered by the authority, the eligible company would likely locate outside the state.

Section 2. Whereas the competitive nature of the global marketplace requires businesses and governments to respond to available opportunities with expediency, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 16, 2007

CHAPTER 3

(HCR 75)

A CONCURRENT RESOLUTION confirming the appointment of Rebecca S. Goss to the Education Professional Standards Board.

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

WHEREAS, pursuant to KRS 161.028, the Governor has appointed Rebecca S. Goss to the Education Professional Standards Board to replace Ann E. Carty, who has resigned, representing local boards of education for a term expiring September 18, 2010; and

WHEREAS, the House of Representatives and the Senate find that Rebecca S. Goss meets the requirements of KRS 161.028 for service on the Education Professional Standards Board;

NOW, THEREFORE,

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

Section 1. The House of Representatives and the Senate, as required by KRS 161.028, hereby confirm the appointment of Rebecca S. Goss to the Education Professional Standards Board for a term expiring September 18, 2010.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution, and written confirmation of its adoption, to Ms. Rebecca S. Goss, Post Office Box 1744, Harlan, Kentucky 40831 and to the Governor, State Capitol, Room 100, Frankfort, Kentucky 40601.

Approved March 16, 2007

CHAPTER 4

(HCR 26)

A CONCURRENT RESOLUTION confirming the appointment of Judith H. Gibbons to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has appointed, by Executive Order 2006-505, Judith H. Gibbons as a member of the Kentucky Board of Education representing the Sixth Supreme Court District for a term expiring April 14, 2010; and

WHEREAS, by letter dated May 9, 2006, the Governor has delivered Judith H. Gibbons's name for confirmation as a member of the board, as required by KRS 11.160, to replace Gail W. Wells, Fort Thomas, who has resigned; and

WHEREAS, the House of Representatives and the Senate find that Judith H. Gibbons meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

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

Section 1. The House of Representatives and the Senate hereby confirm the appointment of Judith H. Gibbons to the Kentucky Board of Education for a term ending April 14, 2010.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Ernie Fletcher, Room 100, State Capitol, Frankfort, Kentucky 40601 and Judith H. Gibbons, 109 Brittany Court, Lakeside Park, Kentucky 41017-2101, in writing, of the General Assembly's action.

Approved March 16, 2007.

CHAPTER 5

(HCR 25)

A CONCURRENT RESOLUTION confirming the appointment of Jennifer L. Forgy to the Education Professional Standards Board.

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

WHEREAS, pursuant to KRS 161.028, the Governor has appointed Jennifer L. Forgy to the Education Professional Standards Board to replace Linda L. Livers, whose term has expired, representing middle or high school teachers for a term expiring September 18, 2010; and

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

NOW, THEREFORE,

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

Section 1. The House of Representatives and the Senate, as required by KRS 161.028, hereby confirm the appointment of Jennifer L. Forgy to the Education Professional Standards Board for a term expiring September 18, 2010.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Concurrent Resolution, and written confirmation of its adoption, to Ms. Jennifer L. Forgy, 2028 Heather Way, Lexington, Kentucky 40503, and to the Governor, State Capitol, Room 100, Frankfort, Kentucky 40601.

Approved March 16, 2007.

CHAPTER 6

(HCR 29)

A CONCURRENT RESOLUTION confirming the appointment of Franklin D. Cheatham to the Education Professional Standards Board.

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

WHEREAS, pursuant to KRS 161.028, Governor Ernie Fletcher has issued Executive Order 2006-1218 appointing Franklin D. Cheatham to the Education Professional Standards Board representing chief academic officers for a term expiring September 18, 2010; and

WHEREAS, the House of Representatives and the Senate find that Franklin D. Cheatham meets the requirements of KRS 161.028 for service on the Education Professional Standards Board;

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NOW, THEREFORE,

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

Section 1. The House of Representatives and the Senate, as required by KRS 161.028, hereby confirm the appointment of Franklin D. Cheatham to the Education Professional Standards Board for a term expiring September 18, 2010.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution, and written confirmation of its adoption, to Franklin D. Cheatham, 30 Nottingham Court, Campbellsville, Kentucky 42718; and to the Governor, State Capitol, Room 100, Frankfort, Kentucky 40601.

Approved March 16, 2007.

CHAPTER 7

(HCR 31)

A CONCURRENT RESOLUTION confirming the appointment of Cynthia W. York to the Education Professional Standards Board.

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

WHEREAS, pursuant to KRS 161.028, Governor Ernie Fletcher has issued Executive Order 2006-1218 appointing Cynthia W. York to the Education Professional Standards Board representing elementary school teachers for a term expiring September 18, 2010; and

WHEREAS, the House of Representatives and the Senate find that Cynthia W. York meets the requirements of KRS 161.028 for service on the Education Professional Standards Board;

NOW, THEREFORE,

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

Section 1. The House of Representatives and the Senate, as required by KRS 161.028, hereby confirm the appointment of Cynthia W. York to the Education Professional Standards Board for a term expiring September 18, 2010.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution, and written confirmation of its adoption, to Cynthia W. York, 505 Wilderness Road, Glasgow, Kentucky 42141; and to the Governor, State Capitol, Room 100, Frankfort, Kentucky 40601.

Approved March 16, 2007.

CHAPTER 8

(HCR 32)

A CONCURRENT RESOLUTION confirming the appointment of Zenaida M. Smith to the Education Professional Standards Board.

WHEREAS, by the authority granted by KRS 161.028, Governor Ernie Fletcher has issued Executive Order 2006-415 appointing Zenaida M. Smith as a member of the Education Professional Standards Board, representing middle and junior high school teachers, to replace David Muse, Louisville, whose has resigned, for a term expiring September 18, 2009; and

WHEREAS, appointments to the Education Professional Standards Board are subject to confirmation by the House of Representatives and the Senate; and

WHEREAS, the House of Representatives and the Senate find that Zenaida M. Smith meets the requirements of KRS 161.028 for service on the Education Professional Standards Board;

NOW, THEREFORE,

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

Section 1. The House of Representatives and the Senate, as required by KRS 161.028, hereby confirm the appointment of Zenaida M. Smith to the Education Professional Standards Board for a term expiring September 18, 2009.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution, and written confirmation of its adoption, to Ms. Zenaida M. Smith, 836 Daniels Drive, Worthington, Kentucky 41183 and to Governor Ernie Fletcher, State Capitol, Room 100, Frankfort, Kentucky 40601.

Approved March 16, 2007.

CHAPTER 9

(HB 244)

AN ACT relating to taxation of hospital services.

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

Section 1. KRS 142.303 is amended to read as follows:

- (1) A tax is hereby imposed at a rate of two and one-half percent (2.5%) on gross revenues received by all providers on or after July 15, 1994, for the provision of hospital services. The tax imposed by this section shall not apply to gross revenues received for dispensing outpatient prescription drugs subject to tax under KRS 142.311.
- (2)
 - (a) *Notwithstanding any other provision of the Kentucky Revised Statutes to the contrary, beginning in state fiscal year 2008-2009 and continuing annually thereafter, the tax imposed under subsection (1) of this section on providers of hospital services who paid taxes in state fiscal year 2005-2006 shall be assessed on gross revenues received by the provider during state fiscal year 2005-2006. Notwithstanding the provisions of KRS 142.301 to KRS 142.363, hospital provider taxes due in state fiscal year 2008 and continuing annually thereafter shall be paid in twelve (12) equal monthly installments, with each payment due no later than twenty (20) days after the last day of each calendar month. At least thirty (30) days prior to the beginning of the state fiscal year, the Department of Revenue shall send written notice to each provider of hospital services of the provider's total tax liability for the year, which shall be the amount the provider paid in taxes in state fiscal year 2005-2006. The provisions of this paragraph also shall apply if the hospital subsequently undergoes a change in ownership.*
 - (b) *If a hospital was not in operation during state fiscal year 2005-2006, the hospital shall be taxed pursuant to the provisions of subsection (1) of this section, provided that, upon request of the provider, the Department of Revenue may adjust the hospital's annual tax liability in accordance with the gross revenues of a comparable hospital.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

Notwithstanding KRS 205.640 or any other provision of the Kentucky Revised Statutes to the contrary, the amount of twenty six million six hundred seventy-three thousand seven hundred sixty-four dollars (\$26,673,764) from hospital provider tax collections under Section 1 of this Act during state fiscal year 2008-2009 and continuing annually thereafter, shall be matched with federal funds and used solely to continue the enhancements implemented in state fiscal years 2006 and 2007 to inpatient payments to hospitals in the Commonwealth, including those hospitals paid under managed care arrangements. Any payments due pursuant to this section shall be made by July 30 of each state fiscal year.

Approved March 16, 2007.

CHAPTER 10**(HB 115)**

AN ACT relating to local government.

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

Section 1. KRS 97.425 is amended to read as follows:

The term "park property" as used in KRS ~~97.425~~~~[97.405]~~ to 97.485 shall be liberally construed, and includes all parks, squares and areas of land within the management of the city; all buildings, structures, improvements, seats, benches, fountains, trees, plants, herbage, flowers and other things thereon and the inclosures of same; all shade trees on street or thoroughfares, resting places, watering stations, playgrounds necessary and incidental to such public parks and property, parade grounds and the like; all connecting parkways and roads or drives between parks, all avenues, roads, ways, drives, walks, with all trees, shrubbery, vines, flowers and ornaments of any description; all birds, animals or curiosities or objects of interest or instruction placed in or on any such inclosures, ways, parkways, roads or places; all maintenance and construction equipment, recreation supplies, and facilities, and any interest or right which the city is able to exercise.

Section 2. KRS 97.455 is amended to read as follows:

There shall be established in each city of the second class electing to operate under KRS ~~97.425~~~~[97.405]~~ to 97.485 a board to be known as the "Board of Park Commissioners." The board shall consist of not less than five (5) nor more than seven (7) members as determined by the legislative body of the city and shall be appointed by the mayor with the approval of a majority of the legislative body for terms of four (4) years, except that the members first appointed shall be so appointed that the terms of not more than two (2) members shall expire in the same year. Any member of the board may be removed by a majority vote of the members of the city legislative body.

Section 3. KRS 97.465 is amended to read as follows:

The board of park commissioners shall be an advisory board only, it being the intention of KRS ~~97.425~~~~[97.405]~~ to 97.485 to vest all powers relating to parks, playgrounds and recreation in the city, subject to the provisions of KRS 97.020. The board of park commissioners, after their appointment, shall convene and elect a president of the board and a secretary. It shall establish rules, not inconsistent with the provisions of KRS 97.405 to 97.485, and shall fix the time and place for the holding of its meetings. The board shall advise the legislative body of the city on appropriate park and recreational programs and projects, and shall promote the full use of all park facilities in the interest of the public.

Section 4. KRS 97.485 is amended to read as follows:

Nothing in KRS ~~97.425~~~~[97.405]~~ to 97.485 shall be construed to conflict with the provisions of KRS 97.020.

Section 5. The following KRS section is repealed:

97.405 Powers and duties of boards of park commissioners vested in cities of second class.

Approved March 19, 2007.

CHAPTER 11**(HB 108)**

AN ACT relating to the preservation of rock fences and making an appropriation therefor.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 171 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 3 of this Act:

- (1) *"Council" means the Kentucky Heritage Council;*
- (2) *"Historic drylaid rock fence" means any drylaid stone fence or wall at least fifty (50) years old that was originally constructed from natural stones and without mortar;*

- (3) *"Historic mortared rock fence" means any rock fence at least fifty (50) years old that was originally constructed from natural stones and mortar; and*
- (4) *"Nonhistoric drylaid rock fence" means any rock fence constructed within the last fifty (50) years from natural stones and without mortar that the Kentucky Heritage Council certifies meets the guidelines for drystone masonry set forth by the Dry Stone Conservancy.*

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

There is hereby established in the State Treasury a rock fence preservation fund, which shall be administered by the council. The fund may receive appropriations, gifts, grants, federal funds, revolving funds, and any other funds from public and private sources, to be used for reconstruction and repair of the Commonwealth's historic drylaid rock fences and historic mortared rock fences.

- (1) *Moneys deposited in the fund shall be disbursed by the State Treasurer under the Rock Fence Preservation Program established in Section 3 of this Act.*
- (2) *Fund amounts not expended at the close of a fiscal year shall not lapse, but shall be carried forward to the next fiscal year. Income earned from investment of the fund shall become part of the fund and shall not lapse.*
- (3) *Amounts deposited in the fund are hereby appropriated for the purposes set forth in Sections 1 to 3 of this Act, and in no case shall the funds be used for executive agency administrative costs.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 171 IS CREATED TO READ AS FOLLOWS:

- (1) *The rock fence preservation program is established and shall be administered by the council. The council shall seek guidance on all technical issues regarding rock fence preservation from the Dry Stone Conservancy. The program shall provide funding for the preservation of historic drylaid rock fences and historic mortared rock fences.*
- (2) *The council shall promulgate administrative regulations in consultation with the Dry Stone Conservancy relating to the establishment of a grant program, including:*
 - (a) *Application and reporting procedures;*
 - (b) *Accountability criteria for grant recipients; and*
 - (c) *Grant appropriation amounts and eligible expenditures.*
- (3) *No funds from the program established in this section shall be utilized for restoration projects which utilize stone removed, harvested, or taken from other historic stone structures without prior approval of the Kentucky Heritage Council in consultation with the Dry Stone Conservancy.*

Section 4. KRS 171.381 is amended to read as follows:

- (1) The Kentucky Heritage Council shall be dedicated to the preservation and protection of all meaningful vestiges of Kentucky's heritage for succeeding generations, and in pursuit of this dedication it shall engage in and concern itself with worthy projects and other matters related to the conservation and continuing recognition of buildings, structures, sites, and other landmarks associated with the archaeological, cultural, economic, military, natural, political, or social aspects of Kentucky's history.
- (2) The duties and functions of the council shall be to:
 - (a) Review and recommend appropriate projects and programs to insure the proper recognition, preservation, and protection of matters related to Kentucky's heritage, particularly those in the nature of or associated with real property;
 - (b) Advise, consult, and cooperate generally with state, local, and national officials and agencies to accomplish the purposes to which the council is dedicated, and specifically with the Kentucky Department of Parks and Historical Society in matters of common concern;
 - (c) Encourage, promote, and coordinate historic preservation programs being conducted in Kentucky by other agencies or groups, public and private;~~and~~

- (d) Prepare and maintain an inventory or survey of Kentucky's resource of historic buildings, sites, structures, and other landmarks, and list in an official roll those ~~such~~ landmarks which possess statewide or national significance; **and**
 - (e) ***Conduct a survey and maintain a catalog of Kentucky's historic drylaid and historic mortared rock fences as defined in Section 1 of this Act.***
- (3) The council may:
- (a) Accept grants or other funds or property from any available source, public or private;
 - (b) Employ, with the approval of the Governor, ~~such~~ staff as may be necessary. Any member of ~~the~~ ~~such~~ staff shall be entitled to compensation under KRS Chapter 18A, and may be reimbursed for necessary and actual expenses in accordance with the provisions of KRS Chapters 44 and 45;
 - (c) Enter into ~~such~~ contractual relationships as may be necessary;
 - (d) Acquire real property, by gift or devise or by purchase pursuant to the provisions of KRS 45A.045, and hold the same in the name of the Commonwealth for the use and benefit of the council;
 - (e) Initiate its own projects of an appropriate nature, and undertake or otherwise engage in joint projects with other agencies or groups, public or private; and
 - (f) Adopt ~~such~~ rules and regulations as may be necessary and incidental to the performance of the council's duties and functions.
- (4) The receipt, control, and expenditure of funds shall be subject to the general provisions of the Kentucky Revised Statutes governing financial administration of all state agencies.
- (5) No provision of this section shall be construed as repealing any of the laws of the Commonwealth relating to the preservation, protection, and recognition of historical matters, but shall be held and construed as ancillary and supplemental thereto.
- (6) The council shall receive applications, interview and recommend to the Governor three (3) persons as nominees for appointment as the director of the Heritage Division, Commerce Cabinet. The director of the Heritage Division shall be the state historic preservation officer.
- (7) The responsibilities of the state historic preservation officer shall include:
- (a) Development for the State Historic Preservation Program;
 - (b) Direction of a comprehensive statewide survey of historic properties;
 - (c) Nomination of historic properties to the National Register of Historic Places;
 - (d) Cooperation in the development of effective working relationships with federal, state, and local agencies that participate in the management of historic properties and in project planning that may affect historic properties;
 - (e) Cooperation in the integration of historic preservation planning with all levels of planning;
 - (f) Cooperation in the development and maintenance of a review procedure for publicly funded, assisted, and licensed undertakings that may affect historic properties within the state;
 - (g) Participation in the review of federal, federally assisted, and federally licensed undertakings that may affect historic properties included in or eligible for inclusion in the National Register under Section 106 of the National Historic Preservation Act and Executive Order 11593;
 - (h) Assisting federal agencies in fulfilling their historic preservation responsibilities under federal law and regulations;
 - (i) Liaison with organizations of professional archaeologists, historians, architects, architectural historians, planners, and others concerned with historic preservation;
 - (j) Development and operation of a program of public information and education concerning the preservation program;
 - (k) Administration of the grants program within the state;
 - (l) Preparation and maintenance of a comprehensive statewide historic preservation plan; and

- (m) The immediate transmittal to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government of any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

Approved March 19, 2007.

CHAPTER 12

(HB 71)

AN ACT designating bluegrass music as the official state music of Kentucky.

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

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

Bluegrass music is named and designated the official state music of Kentucky.

Approved March 19, 2007.

CHAPTER 13

(HB 312)

AN ACT authorizing the payment of certain claims against the state which have been duly audited and approved according to law, and have not been paid because of the lapsing or insufficiency of former appropriations against which claims were chargeable, or the lack of an appropriate procurement document in place, and declaring an emergency.

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

Section 1. (1) There is appropriated out of the general fund and the transportation fund in the State Treasury for the purpose of compensating persons and companies named below for claims which have been duly audited and approved according to law, but have not been paid because of lapsing or insufficiency of former appropriations against which the claims were chargeable, or the lack of an appropriate procurement document in place, the amounts listed below:

Abell/Irvin Elevator Service Company	
P.O. Box 403649	
Atlanta, GA 30384-3649	\$1,955.00
AcuteCare E'Town, PLLC	
2412 Ring Road, Suite 100	
Elizabethtown, KY 42702	\$40.00
Ajilon Consulting US	
Dept. CH 10682	
Palatine, IL 60055-0682	\$1,824.00
Commercial Pavers, Inc.	
1801 Payne Street	
Louisville, KY 40206	\$1,478.75
Ehrenpreis, David	
5 Horizon Road	

Fort Lee, NJ 07024	\$175,000.00
Estill County Airport Board	
38 Edgewood Drive	
Irvine, KY 40336-1082	\$1,650.00
Frankfort Plant Board	
317 West 2nd Street	
Frankfort, KY 40601	\$175,397.00
Hopkins County Fiscal Court	
56 North Main Street	
Madisonville, KY 42431	\$6,528.19
Kentucky Medical Services Foundation	
P.O. Box 587	
Lexington, KY 40586-0587	\$8,507.00
Kentucky Retirement Systems	
1260 Louisville Road	
Frankfort, KY 40601	\$1,196.93
Kentucky Retirement Systems	
1260 Louisville Road	
Frankfort, KY 40601	\$5,673.73
Louisville/Jefferson County Metro Government	
c/o Finance Department/Business Office	
611 West Jefferson Street	
Louisville, KY 40202	\$20,357.30
Louisville/Jefferson County Metro Government	
c/o Finance Department/Business Office	
611 West Jefferson Street	
Louisville, KY 40202	\$139,372.28
Middlesboro Appalachian Regional Hospital	
3600 West Cumberland Avenue	
Middlesboro, KY 40965	\$160.00
Morgan & Pottinger, PSC	
601 West Main Street	
Louisville, KY 40202	\$5,473.00
Qwest Communications	
Business Services	
P.O. Box 856169	\$283.14
Louisville, KY 40285-6169	
Select Lab Services	

140 East Fifth Street London, KY 40741	\$100.00
Sturgill, Turner, Barker & Moloney, PLLC 155 East Main Street Lexington, KY 40597	\$6,366.07
Together We Can Counseling Center, LLC P.O. Box 1733 London, KY 40743	\$100.00
Veracity Programs, Inc. P.O. Box 410047 Kansas City, MO 64141-0047	\$3,056.00
Williamson LLC P.O. Box 1283 206 Coconut Avenue Anna Maria, FL 34216	\$2,304.00

(2) The claims listed below are for the payment of State Treasury checks payable to the persons or their personal representatives, and the firms listed, but not presented for payment within a period of five years from the date of issuance of such checks as required by KRS 41.370 and 413.120.

	Payee	Treasury Fee	Total Check
Check # G13663468 dated January 22, 1998			
AG Transport 5620 Greenlick Road Corydon, KY 42406	\$166.98	\$25.00	\$141.98
Check # G13663482 dated January 22, 1998			
AG Transport 5620 Greenlick Road Corydon, KY 42406	\$389.63	\$25.00	\$364.63
Check # G10937933 dated June 18, 1999			
Ann Atwell 1734 Berry Blvd Louisville, KY 40215	\$977.50	\$25.00	\$952.50
Check # T6630224 dated April 15, 1999			
Jack Baker 60 Sybal Lane Aiken, SC 29801	\$97.00	\$25.00	\$72.00
Check # Y17643436 dated January 24, 2000			
Roxanne Brinley 201 Fairmont Street #B			

Clearwater, FL 33755	\$150.00	\$25.00	\$125.00
Check # G4402947 dated May 14, 1999			
Stacye Cannon			
6329 Ebenezer-Ovil Road			
Hopkinsville, KY 42240-8932	\$125.00	\$25.00	\$100.00
Check # G3420741 dated November 6, 1997			
John Caudill			
Route 2, Box 217			
Ezel, KY 41425-9015	\$161.08	\$25.00	\$136.08
Check # BT0109610 dated December 24, 1997			
Irene Chestnut			
724 Carlin Court			
Carmel, IN 46032	\$1,344.26	\$25.00	\$1,319.26
Check # T18549305 dated February 15, 2001			
Jerome L. Coulter			
300 Smith Ridge Road			
Campbellsville, KY 42718	\$183.00	\$25.00	\$158.00
Check # T19304420 dated May 16, 2001			
Cortni Crews			
359 Barton Shockley Road			
Scottsville, KY 42164	\$572.00	\$25.00	\$547.00
Check # E11611794 dated November 24, 1999			
John E. Davis			
1389 Logan Station Road			
Shelbyville, KY 40065	\$228.87	\$25.00	\$203.87
Check # T5438669 dated April 18, 1988			
Kelley Deaton, Jr.			
359-C South Fourth Street			
Danville, KY 40422	\$96.00	\$25.00	\$71.00
Check # T6780695 dated May 3, 1999			
Walter K. & D. M. Dollar			
452 Pine Creek Road			
Shepherdsville, KY 40165	\$118.00	\$25.00	\$93.00
Check # T13298666 dated July 5, 1985			
Doris Downs			
4700 Trowbridge Terrace, Apt. 102			
Louisville, KY 40207	\$766.85	\$25.00	\$741.85
Check # T15027388 dated July 7, 1987			

Doris Downs			
4700 Trowbridge Terrace, Apt. 102			
Louisville, KY 40207	\$483.39	\$25.00	\$458.39
Check # T3394978 dated May 6, 1996			
Mable Elkins			
135 Stoll Avenue			
Louisville, KY 40206	\$281.00	\$25.00	\$256.00
Check # E1532671 dated June 8, 1999			
Janet R. Fleming			
314 Skyline Park Drive			
Hopkinsville, KY 42240	\$4,035.00	\$25.00	\$4,010.00
Check # CS4466882 dated April 28, 1998			
William T. Francis			
c/o Dianne Darnell, CHFS Child Support			
P.O. Box 2150			
Frankfort, KY 40602-2150	\$29.99	\$25.00	\$4.99
Check # Y10656753 dated July 30, 2001			
Patsy Frazier			
c/o Dianne Darnell, CHFS Child Support			
P.O. Box 2150			
Frankfort, KY 40602-2150	\$700.00	\$25.00	\$675.00
Check # T18783541 dated March 14, 2001			
Timothy & J. Freimuth			
71 Wellington Drive			
Florence, KY 41042	\$1,309.00	\$25.00	\$1,284.00
Check # T15875285 dated June 11, 1998			
Gay H. Guthrie			
c/o Farison Lawn Care			
11500 Electron Drive			
Louisville, KY 40299-3858	\$555.00	\$25.00	\$530.00
Check # G11601980 dated October 11, 2000			
Harlan County Sheriff's Office			
P.O. Box 978			
Harlan, KY 40831	\$100.00	\$25.00	\$75.00
Check # T18776276 dated March 13, 2001			
Paul J. & K.C. Isaac			
75 Prospect Avenue			
Larchmont, NY 10538	\$120.17	\$25.00	\$95.17

Check # T4147188 dated June 3, 1986

Loretta & Sindin Jobs

301 North 12th Street, Suite H

Murray, KY 42071	\$1,137.00	\$25.00	\$1,112.00
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Check # T4686058 dated May 21, 1997

Timothy Kaelin

P.O. Box 7993

Louisville, KY 40257	\$266.39	\$25.00	\$241.39
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Check # G2834296 dated February 11, 1997

Melanie W. Kelley

2714 S.R. 1181

Bardwell, KY 42023	\$50.88	\$25.00	\$25.88
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Check # B100256754 dated March 8, 2001

Ken Tenn Raceway, Inc.

P.O. Box 729

Morehead, KY 40351	\$40.00	\$25.00	\$15.00
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Check # T4372298 dated April 11, 1997

Kathryn E. Kerber

21550 Westport Avenue

Euclid, OH 44123	\$197.00	\$25.00	\$172.00
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Check # T17615735 dated June 29, 1990

John C. & I. M. Lewis

P.O. Box 314

Baxter, KY 40806	\$85.84	\$25.00	\$60.84
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Check # GT0541289 dated April 13, 1998

Lil Kings & Queens Childcare

Attn: Jaque O'Neal Thomas, CEO

3216 Dumesnil Street

Louisville, KY 40211	\$8,467.27	\$25.00	\$8,442.27
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Check # Y12318776 dated June 5, 1996

Cynthia Smith Love

c/o Dianne Darnell, CHFS Child Support

P.O. Box 2150

Frankfort, KY 40602-2150	\$60.00	\$25.00	\$35.00
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Check # T5900437 dated August 18, 1998

Minda McCandless

2011 NE Clackamas Street, #9

Portland, OR 97232	\$557.00	\$25.00	\$532.00
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Check # T3722463 dated June 1, 1996

Gary Musgrave

659 Ridgeway Drive

Taylor Mill, KY 41015

\$106.00

\$25.00

\$81.00

Check # T16455731 dated March 29, 1999

Khoa N. Nguyen

7218 Lawn Side Drive

Louisville, KY 40214

\$92.00

\$25.00

\$67.00

Check # T18228466 dated May 25, 2000

Sergio & Mary Pisterman

P.O. Box 23376

Louisville, KY 40223

\$484.00

\$25.00

\$459.00

Check # E11797893 dated August 6, 2001

Jose Rodriquez

1110 Old Barren River Road

Bowling Green, KY 42101

\$100.00

\$25.00

\$75.00

Check # G11866928 dated December 14, 2000

Judy A. Roper

112 Oak Meadow Drive

Berea, KY 40403

\$48.00

\$25.00

\$23.00

Check # T14021402 dated May 15, 1986

Bobby C. & V. Rose

P.O. Box 234

Stamping Ground, KY 40379

\$70.00

\$25.00

\$45.00

Check # L12471388 dated December 3, 1999

Fonso Smith

c/o Marsha Hall, Department of Labor

1047 US 127 South, Suite 4

Frankfort, KY 40601

\$105.22

\$25.00

\$80.22

Check # L12471375 dated December 3, 1999

Fonso Smith

c/o Marsha Hall, Department of Labor

1047 US 127 South, Suite 4

Frankfort, KY 40601

\$2,065.89

\$25.00

\$2,040.89

Check # T5757724 dated May 20, 1998

Charlotte H. Stirman

c/o Janet Masterson

P.O. Box 36010

Louisville, KY 40233	\$249.78	\$25.00	\$224.78
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Check # Y18974323 dated October 4, 2000

Linda Tingle
c/o Dianne Darnell, CHFS Child Support
P.O. Box 2150

Frankfort, KY 40602-2150	\$75.77	\$25.00	\$50.77
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Check # P16047044 dated April 7, 2000

Rep. Robin L. Webb
c/o Legislative Research Commission
700 Capital Avenue

Frankfort, KY 40601	\$1,613.73	\$25.00	\$1,588.73
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Check # G10933097 dated April 4, 2000

Rep. Robin L. Webb
c/o Legislative Research Commission
700 Capital Avenue

Frankfort, KY 40601	\$1,496.00	\$25.00	\$1,471.00
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Check # E11603374 dated September 2, 1999

Ann Wheeler
c/o John Wheeler
3204 Breckenwood Drive

Lexington, KY 40502	\$101.00	\$25.00	\$76.00
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Check # Y14661051 dated June 8, 1998

Melissa Harvey White
c/o Dianne Darnell, CHFS Child Support
P.O. Box 2150

Frankfort, KY 40602-2150	\$750.00	\$25.00	\$725.00
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Section 2. The Finance and Administration Cabinet and the State Treasurer are authorized to pay the following listed claims from the following funds:

- (1) The Education Cabinet is authorized to make payment from their Unemployment Compensation Fund for state treasury checks payable to the persons or their personal representatives but not presented for payment within a period of five years from the date of issuance of the checks, the amounts listed below:

	Payee	Treasury Fee	Total Check
Check # U14169823 dated October 20, 2000			
Wilma J. Haskins			
3853 Darlene Drive			
Louisville, KY 40216	\$632.00	\$25.00	\$607.00

Section 3. Whereas the persons and companies named above have furnished in good faith the services, supplies, and materials enumerated, and the Commonwealth has received the same, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 19, 2007.

CHAPTER 14**(HB 321)**

AN ACT relating to delinquent property taxes.

WHEREAS, the Court of Appeals issued an opinion in the case of Flag Drilling Company, Inc. v. Commonwealth of Kentucky, Revenue Cabinet, which was released for publication on March 24, 2005, in which the court held that private purchasers of certificates of delinquency are entitled to collect reasonable attorneys' fees and costs from individuals paying certificates of delinquency; and

WHEREAS, prior to the issuance of that opinion, private purchasers were not permitted to collect reasonable attorneys' fees and costs from individuals paying certificates of delinquency; and

WHEREAS, since the issuance of that opinion, it has come to the attention of the General Assembly that some private purchasers have been attempting to exact unconscionable attorneys' fees and costs from individuals paying certificates of delinquency, and that some private purchasers have made it very difficult for taxpayers to make payments on certificates of delinquency by not providing sufficient contact information to taxpayers; and

WHEREAS, it is the intent of the General Assembly, through the enactment of the provisions of Section 1 of this Act, to establish a reasonable amount that may be collected by private purchasers for costs and attorneys' fees, and to require private purchasers of certificates of delinquency to provide contact information to taxpayers so that taxpayers may pay certificates of delinquency;

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other provisions of this chapter, a private purchaser of a certificate of delinquency shall be entitled to collect only the following:*
- (a) *The amount actually paid to purchase the certificate of delinquency;*
 - (b) *Interest accrued subsequent to the date the certificate of delinquency was purchased as provided in Section 6 of this Act;*
 - (c) *Attorneys' fees as provided in this paragraph.*
 - 1. *Attorneys' fees incurred for collection efforts prior to litigation as follows:*
 - a. *If the amount paid for a certificate of delinquency is between five dollars (\$5) and three hundred fifty dollars (\$350), actual reasonable fees incurred up to one hundred percent (100%) of the amount of the certificate of delinquency, not to exceed three hundred fifty dollars (\$350);*
 - b. *If the amount paid for a certificate of delinquency is between three hundred fifty-one dollars (\$351) and seven hundred dollars (\$700), actual reasonable fees incurred up to eighty percent (80%) of the amount of the certificate of delinquency, not to exceed five hundred sixty dollars (\$560); and*
 - c. *If the amount paid for a certificate of delinquency is above seven hundred one dollars (\$701), actual reasonable fees incurred up to seventy percent (70%) of the amount of the certificate of delinquency, not to exceed seven hundred dollars (\$700).*
 - 2. *If a private purchaser is the owner of more than one (1) certificate of delinquency against the same taxpayer, actual and reasonable pre-litigation attorneys' fees for all certificates of delinquency against the same taxpayer shall not exceed one and one-half times the maximum amount permitted in subparagraph 1. of this paragraph for the largest tax bill owed by the taxpayer.*
 - 3. *In addition to the pre-litigation attorneys' fees established by subparagraphs 1. and 2. of this paragraph, a private purchaser may collect actual, reasonable attorneys' fees and costs that*

arise due to the prosecution of collection remedies or the protection of a certificate of delinquency that is involved in litigation; and

- (d) *Administrative fees incurred for preparing, recording, and releasing an assignment of the certificate of delinquency in the county clerk's office, not to exceed one hundred dollars (\$100).*
- (2) *A private purchaser holding a certificate of delinquency on the effective date of this Act shall, regardless of when that certificate of delinquency was purchased, send to the property owner by January 31, 2008, at the address reflected in the records maintained by the property valuation administrator, the following information:*
 - (a) *The legal name of the purchaser;*
 - (b) *The purchaser's physical address;*
 - (c) *The purchaser's mailing address for payments, if different from the physical address; and*
 - (d) *The purchaser's telephone number.*
- (3) *The provisions of subparagraph 4. of paragraph (b) of subsection (1) of Section 5 of this Act, relating to notice if contact information changes, shall apply to all private purchasers of certificates of delinquency regardless of when the certificate of delinquency was purchased.*
- (4) *Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the private purchaser shall send to the taxpayer by first class mail, with proof of mailing, a notice informing the taxpayer that the certificate of delinquency may be enforced as provided in subsection (2) of Section 5 of this Act. The notices shall be sent to the address reflected in the records maintained by the property valuation administrator. The notice shall also include the contact information required by subsection (1)(b) of Section 5 of this Act.*
- (5) *Within thirty (30) days but at least fifteen (15) days prior to initiating any of the collection remedies enumerated in subsection (2) of Section 5 of this Act, the private purchaser shall send to the taxpayer by first class mail, with proof of mailing, a notice informing the taxpayer that enforcement actions will be taken. The notices shall be sent to the address reflected in the records maintained by the property valuation administrator. The notice shall also include the contact information required by subsection (1)(b) of Section 5 of this Act.*

Section 2. KRS 134.420 is amended to read as follows:

- (1) (a) The state and each county, city, or other taxing district shall have a lien on the property assessed for taxes due them respectively for ten (10) years following the date when the taxes become delinquent, and also on any real property owned by a delinquent taxpayer at the date when the sheriff offers the tax claims for sale as provided in KRS 134.430 and 134.440.
- (b) This lien shall not be defeated by gift, devise, sale, alienation, or any means except by sale to a bona fide purchaser, but no purchase of property made before final settlement for taxes for a particular assessment date has been made by the sheriff shall preclude the lien covering the taxes.
- (c) The lien shall include all interest, penalties, fees, commissions, charges, costs, ~~reasonable~~ attorney fees, and other expenses *as provided by this chapter that have been* incurred by reason of delinquency in payment of the tax bill or certificate of delinquency or in the process of collecting either, and shall have priority over any other obligation or liability for which the property is liable.
- (d) The lien of any city, county, or other taxing district shall be of equal rank with that of the state.
- (e) When any proceeding is instituted to enforce the lien provided in this subsection, it shall continue in force until the matter is judicially terminated.
- (f) Every city of the third, fourth, fifth, and sixth class shall file notice of the delinquent tax liens with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The notice shall be recorded in the same manner as notices of lis pendens are filed, and the file shall be designated miscellaneous state and city delinquent and unpaid tax liens.
- (2) If any person liable to pay any tax administered by the Department of Revenue, other than a tax subject to the provisions of subsection (1) of this section, neglects or refuses to pay the tax after demand, the tax due together

with all penalties, interest, and other costs applicable provided by law shall be a lien in favor of the Commonwealth of Kentucky. The lien shall attach to all property and rights to property owned or subsequently acquired by the person neglecting or refusing to pay the tax.

- (3) The lien imposed by subsection (2) of this section shall remain in force for ten (10) years from the date the notice of tax lien has been filed by the commissioner of the Department of Revenue, or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or any county in which the taxpayer has an interest in property.
- (4) The tax lien imposed by subsection (2) of this section shall not be valid as against any purchaser, judgment lien creditor, or holder of a security interest or mechanic's lien until notice of the tax lien has been filed by the commissioner of the Department of Revenue or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The recording of the tax lien shall constitute notice of both the original assessment and all subsequent assessments of liability against the same taxpayer. Upon request, the Department of Revenue shall disclose the specific amount of liability at a given date to any interested party legally entitled to the information.
- (5) Even though notice of a tax lien has been filed as provided by subsection (4) of this section, and notwithstanding the provisions of KRS 382.520, the tax lien imposed by subsection (2) of this section shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made within forty-five (45) days after the date of tax lien filing or the date the person making the disbursements had actual notice or knowledge of tax lien filing, whichever is earlier, provided the security interest:
 - (a) Is in property which:
 1. At the time of tax lien filing is subject to the tax lien imposed by subsection (2) of this section; and
 2. Is covered by the terms of a written agreement entered into before tax lien filing; and
 - (b) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

Section 3. KRS 134.460 is amended to read as follows:

~~{(1) Certificates of delinquency shall bear interest from the date of issuance until collected at the rate of twelve percent (12%) per annum simple interest. A fraction of a month is counted as an entire month. The total amount of the certificate of delinquency, the clerk's add on fee provided in KRS 134.480, and the county attorney's add on fee provided in KRS 67C.115 shall be included in the base for the interest calculation.~~

~~{(2)}~~ Certificates of delinquency shall be prima facie evidence that:

- ~~{(1){(a)}}~~ The property represented by the certificate was subject to taxes levied thereon, and was assessed as required by law.
- ~~{(2){(b)}}~~ The tax bill was valid and correct in all respects.
- ~~{(3){(c)}}~~ The taxes were not paid at any time before the issuance of the certificate.

Section 4. KRS 134.480 is amended to read as follows:

- (1) (a) The delinquent taxpayer or any person owning or having a legal or equitable interest in real property covered by a certificate of delinquency may at any time pay the total amount of the certificate to any purchaser thereof, and any person whatsoever may likewise pay a certificate of delinquency when the *claim is purchased by the sheriff on behalf of the state, county, or taxing district pursuant to KRS 134.450(2)*~~{was the purchaser}~~.
- (b) 1. When a certificate is paid to an owner other than the state, county, or taxing district, the assignee shall mark paid in full on the certified copy of the certificate and shall *release the lien, or* surrender the certified copy of the certificate of delinquency to the person making payment, and, if *the person making payment*~~he~~ is the person primarily liable on the certificate, *the person*~~he~~ may file it with the county clerk and have the certificate released of record.

2. ***If the owner fails to release the lien within thirty (30) days, or surrender the certified copy of the certificate of delinquency to the person making payment within thirty (30) days after payment has been tendered to the owner at the mailing address designated in the notice required by paragraph (b) of subsection (1) of Section 5 of this Act, the owner of the property subject to the certificate of delinquency shall have all of the remedies provided in KRS 382.365 against the owner of the certificate of delinquency.***
- (c) When a certificate of delinquency has been fully paid to the state, county, and taxing districts, the clerk shall note the name and address of the person making the payment, the amount paid by ~~the person~~^{him}, and such other information as the department~~of Revenue~~ may require. The clerk shall mark the certificate of delinquency paid in full. Payment in such instance by one other than the person primarily liable on the certificate will amount to an assignment ***of the certificate of delinquency***~~thereof~~. ***The payor shall be subrogated to the lien priority of the state, county, or taxing districts as provided in subsection (1) of Section 2 of this Act, and the certificate of delinquency shall be collectible as provided in this subsection and subsection (2) of this section.*** The clerk shall note the assignment on the certificate of delinquency and provide the assignee a certified copy of the certificate of delinquency, or the clerk may provide for a certified electronic certificate of delinquency in the clerk's records in lieu of delivering a certified copy of the certificate of delinquency.
- (d) Anyone other than the person primarily liable who pays a certificate or purchases it from an owner other than the state, county, and taxing district may, by paying a fee pursuant to KRS 64.012, have the clerk record the payment or purchase and such recordation shall constitute an assignment thereof. ***The assignment shall be recorded in the same manner as a notice of lis pendens.*** Failure to obtain such an assignment shall render the claim of such payor or purchaser to any real estate represented thereby inferior to rights of other bona fide purchasers, payors, or creditors. Any owner of a certificate of delinquency once having paid the assignment fee may have a change of his address noted of record by the clerk without paying an additional charge, otherwise ~~the person~~^{he} shall pay a fee pursuant to KRS 64.012 to the clerk for entering such change on the certificate.
- (2) (a) The county clerk may receive payment of the amount due on certificates of delinquency owned by the state, county, and taxing districts, and ~~the clerk~~^{he} shall give a receipt to the payor and make a report to the department~~of Revenue~~, the county treasurer, and the proper officials of the taxing districts as often as such units may require, and not less than once in every thirty (30) days.
- (b) The clerk may accept payment of taxes due by any commercially acceptable means, including credit cards.
- (c) ~~The clerk~~^{He} shall pay to the department~~of Revenue~~ for deposit with the State Treasurer all moneys collected by ~~the clerk~~^{him} due the state, to the county treasurer all moneys due the county, and to the authorized officers of the taxing districts the amount due each such district. ~~The clerk~~^{He} shall pay the amount of fees, costs, commissions, and penalties to the persons, agencies, or parties entitled thereto.
- (d) ~~The clerk~~^{He} shall retain ten percent (10%) of the amount due each taxing unit ***as a fee*** for~~his~~ services ~~provided as a fee~~. This fee shall be added to the amount of the tax claim and paid by the persons paying the tax claim.
- (3) (a) ~~A~~^{If the} person entitled to pay a certificate of delinquency ***who is having difficulty locating a private purchaser to make payment on a certificate of delinquency may send***~~sends~~ a registered letter addressed to ***the private purchaser who is*** the owner of record of the certificate. ~~If~~^{other than the state, county, or taxing district, and} the letter is returned by mail unclaimed, ***or if the private purchaser fails to respond within fifteen (15) days, the sender may provide proof that the letter was returned or that the private purchaser did not respond within fifteen (15) days to the county clerk, and***~~thereof~~ may ***then*** make payment to the county clerk, who shall make the necessary assignment or release and deposit the money in an escrow account for this specific purpose in the nearest bank having its deposits insured with the Federal Deposit Insurance Corporation. ***The county clerk may maintain one (1) escrow account for all deposits made pursuant to this paragraph and shall maintain a record reflecting the amount due each private purchaser.***
- (b) The clerk may deduct the sum of ***twenty dollars (\$20)***~~ten dollars (\$10)~~ as a fee for such service. The name of the bank in which the money is deposited shall be noted on the certificate.

(c) *The clerk shall mail a copy of the certificate by regular mail to the owner of record of the certificate at the address on the certificate.*

- (4) If any clerk fails to pay to the person entitled thereto, upon **written** demand, the money received in payment of a certificate of delinquency, ~~the clerk~~^{he} and ~~the clerk's~~^{his} sureties shall be liable for the same and twenty percent (20%) interest thereon annually from the **fifteenth day after the** time ~~the clerk~~^{he} received **the written demand**~~it~~ until paid.
- (5) Copies of the records provided for in KRS 134.450 and this section, certified by the county clerk, shall be evidence of the facts stated in them in all the courts of this state.

Section 5. KRS 134.490 is amended to read as follows:

- (1) Within fifty (50) days after the issuance of a certificate of delinquency to a private purchaser, the private purchaser shall give the same notice as required of a county attorney in KRS 134.500(3)~~(2)~~.

(a) The notice shall advise the owner that:

1. The certificate is a lien of record against all property of the owner;~~[- and]~~
2. **The certificate** bears interest at the rate **provided in Section 6 of this Act**; ~~of twelve percent (12%) per annum,~~ and
3. If the certificate is not paid, it will be subject to collection as provided by law.

(b) *In addition, the notice shall provide the following information to the taxpayer:*

1. *The legal name of the purchaser;*
2. *The purchaser's physical address;*
3. *The purchaser's mailing address for payments, if different from the physical address; and*
4. *The purchaser's telephone number.*

If the information required by this paragraph changes, the purchaser shall send a notice to the taxpayer by registered mail with the corrected information. Failure to send the original notice or any correction notices shall result in the suspension of the accrual of all interest and any fees incurred by the purchaser after that date until proper notice is given as required by this subsection.

- (2) If a private person is the owner of a certificate of delinquency, ~~the private purchaser~~^{he} may, after the expiration of the one (1) year period provided in KRS 134.470:
- (a) Institute an action against the delinquent taxpayer to collect the amount of the certificate, and any other certificates subsequently issued to the same owner against the same delinquent, and shall have all the remedies available for the enforcement of a debt; or
 - (b) Institute an action to enforce the lien provided in subsection (1) of KRS 134.420, represented by the certificate that is more than one (1) year of age, and those certificates subsequently held by the same owner against the same delinquent or property; or
 - (c) Institute one (1) action including both types of actions mentioned in paragraphs (a) and (b) of this subsection, and the joinder of actions shall not be defeated if the delinquent taxpayer has disposed of any property covered by the lien, but the purchaser of the property shall be made a defendant if the judgment is to affect his interest in the property, and as between them the delinquent taxpayer shall be responsible.
- (3) If the state, county, or a taxing district is the owner of a certificate of delinquency, it shall have, after the expiration of the one (1) year period provided in KRS 134.470, in addition to the remedies mentioned in subsection (2) of this section, the right to distrain and sell any property owned by the delinquent, including that on which the lien provided in subsection (1) of KRS 134.420 has attached. Any property sold under distraint proceedings shall be sold in the same manner as provided in KRS 134.430 and 134.440, except that the exercise of the power shall be vested in the county attorney.
- (4) If property is sold pursuant to a judgment of foreclosure, it shall be appraised pursuant to the provisions of KRS 426.520 and there shall be a right of redemption as provided in KRS 426.530. If there is no purchaser at a

foreclosure sale, the master commissioner shall make a deed to the person or persons shown by record to be the owner of the certificate or certificates of delinquency, and they shall have a pro rata interest in accordance with the amount of their respective certificates.

Section 6. KRS 134.500 is amended to read as follows:

- (1) (a) ~~{Certificates of delinquency shall bear interest at twelve percent (12%) per annum simple interest from the date the certificate of delinquency is issued. A fraction of a month is counted as an entire month. The five dollar (\$5) sheriff's fee, the advertising costs provided in KRS 134.420, the clerk's add on fee provided in KRS 134.480, and the county attorney's add on fee provided in this section shall be included in the interest calculation in counties containing cities of the first class or consolidated local government and shall be excluded in other counties, except upon adoption of an ordinance by a county to include in the interest calculation the fees provided for in KRS 134.420, the clerk's add on fee provided in KRS 134.480, and the county attorney's add on fee provided in this section. All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he or she makes the next regular settlement.~~
 - (b) ~~{A certificate of delinquency shall bear interest at twelve percent (12%) per annum simple interest from the date the certificate of delinquency is issued. A fraction of a month is counted as an entire month. **The amount on which interest is calculated includes the following:**~~
 1. *The face amount of the tax due;*
 2. *The ten percent (10%) penalty;*
 3. *The five dollar (\$5) sheriff's fee; and*
 4. *Advertising costs incurred.*
 - (b) *If a certificate of delinquency is paid by a private purchaser, the amount paid by the private purchaser shall become the base amount upon which interest is calculated from the date of purchase until paid.*~~{The total amount of the certificate of delinquency, the clerk's add on fee provided in KRS 134.480, and the county attorney's add on fee provided in this section shall be included in the base for the interest calculation}.~~
- (2) All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.
 - (3)~~{(2)}~~ The department shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the department shall first offer the collection duties to the county attorney, unless the department determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the department on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:
 - (a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney or the department~~{of Revenue}~~ shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.
 - (b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.
 - (c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.

- (d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.
- (e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage. The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the property valuation administrator. The property valuation administrator shall review this list in accordance with the provisions of KRS 132.220 to establish that the properties on the list can be identified and physically located.
- ~~(4)(3)}~~ The county attorney who enters into a contract with the department shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in KRS 134.470 to collect delinquent tax bills or to initiate court action for their collection. At the expiration of the two (2) years the department may assume responsibility for all uncollected bills except those with pending court action.
- ~~(5)(4)}~~ The county attorney who enters into a contract with the department and performs his or her duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the fee shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the taxing districts. This fee shall be waived if the certificate of delinquency is paid by the taxpayer only within five (5) days of the sheriff's sale. If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action or files a cross-claim, an additional county's attorney fee equal to thirteen percent (13%) of the total tax plus ten percent (10%) penalty **and actual costs, including additional attorneys' fees incurred by the county attorney necessary to prosecute any of the collection remedies available in subsections (2) and (3) of Section 5 of this Act**, may be added to the certificate or the bill and shall become part of the tax claim.
- ~~(6)(5)}~~ If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the department shall assume responsibility for the collection process. In the performance of those duties, the department shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the department by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the department for deposit in the delinquent tax fund provided for under KRS 134.400.
- ~~(7)(6)}~~ Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the commissioner, and the petition may be sent to the department, which may require revision in instances where it deems revision or amendment necessary. The department shall advise the county attorney in all actions, and may send him or her special assistance when the commissioner deems assistance necessary. A copy of the judgment shall also be sent to the department. If the department sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be entitled to his or her full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.
- ~~(8)(7)}~~ The department may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the department to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the department.

- ~~(9)~~~~(8)~~ The county attorney may, at any time after assuming collection duties, enter into an agreement with the delinquent taxpayer to accept installment payments on the delinquent tax bill. The agreement shall not waive the county attorney's right to initiate court action or other authorized collection activities if the taxpayer does not make payments in accordance with the agreement.

Section 7. KRS 134.990 is amended to read as follows:

- (1) Any sheriff who violates subsection (2) of KRS 134.140 shall be fined one hundred dollars (\$100) for each offense.
- (2) Any person who violates the provisions of KRS 134.150 shall, upon indictment and conviction in the county in which the act was done, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), and be removed from office.
- (3) Any sheriff who violates subsection (3) of KRS 134.170 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.
- (4) Any sheriff who violates subsection (2) of KRS 134.200 shall be fined not less than five hundred dollars (\$500) for each offense.
- (5) Any outgoing sheriff who fails for ten (10) days to comply with the provisions of KRS 134.215 shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), and be liable on his bond for any default.
- (6) Any sheriff who fails to report as required in KRS 134.300 shall be liable to indictment in the county of his residence, and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (7) Any sheriff who fails to report as provided in KRS 134.320 shall be liable to indictment in the Franklin Circuit Court, and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.
- (8) Any person who willfully fails to comply with any rule or regulation promulgated under subsection (4) of KRS 134.380 shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000).
- (9) Any sheriff who violates subsection (5) of KRS 134.430 shall be fined one hundred dollars (\$100) and be liable on his official bond for the damages sustained by any person aggrieved.
- (10) Any county attorney who fails to prepare, and any sheriff who fails to serve, the notice provided for in subsection ~~(3)~~~~(2)~~ of KRS 134.500 shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100).
- (11) Any sheriff who intentionally fails to keep his books in an intelligible manner and according to the form prescribed by the Department of Revenue, or to make the entries required by law, shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) for each offense.
- (12) Any person who fails to do an act required, or does an act forbidden, by any provision of this chapter for which no other penalty is provided shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).

Approved March 19, 2007.

CHAPTER 15

(SJR 48)

A JOINT RESOLUTION relating to the Kentucky All Schedule Prescription Electronic Reporting program.

WHEREAS, the Kentucky All Schedule Prescription Electronic Reporting program (KASPER) is proving to be an increasingly effective tool in combating the problem of prescription drug abuse in the Commonwealth; and

WHEREAS, the effectiveness of KASPER greatly depends on the ability of the system to capture information in regard to controlled substance prescriptive activity and this effectiveness can be defeated by obtaining prescriptions from medical practitioners in adjoining states; and

WHEREAS, the General Assembly, recognizing this weakness, has specifically authorized the secretary of the Cabinet for Health and Family Services to enter into reciprocal agreements with any other state or states of the United States to share prescription drug monitoring information if the other state's prescription drug monitoring program is compatible with the program in Kentucky; and

WHEREAS, the KASPER program has made significant strides in reducing the time lag experienced by users in retrieving information from the system but room yet remains for improvement, including the possibility of real-time access for medical and pharmaceutical practitioners;

NOW, THEREFORE,

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

Section 1. The Cabinet for Health and Family Services shall actively and immediately exercise the authority delegated to the secretary of that cabinet in 2004 to enter into reciprocal agreements with other states relative to the Kentucky All Schedule Prescription Electronic Reporting (KASPER) system.

Section 2. The Cabinet for Health and Family Services shall actively and immediately identify and resolve the personnel, hardware, software, and regulatory steps needed to achieve the goal of allowing KASPER system users real-time access to the system and its capabilities.

Section 3. The secretary of the Cabinet for Health and Family Services shall prepare and tender to the Legislative Research Commission by November 1, 2007, a report detailing the actions of the secretary and the cabinet taken in accordance with this Joint Resolution.

Section 4. The Clerk of the House of Representatives of the Kentucky General Assembly is directed to deliver a copy of this Joint Resolution to the secretary of the Cabinet for Health and Family Services.

Approved March 19, 2007.

CHAPTER 16

(HB 46)

AN ACT relating to engineers.

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

Section 1. KRS 322.160 is amended to read as follows:

- (1) Licenses for individuals and permits for business entities shall be valid for not more than two (2) years from the date of issuance, unless renewed.
- (2) The executive director shall notify every licensee and permit holder at least one (1) month in advance of the pending expiration date.
 - (a) Renewal notices shall be mailed to the licensee or permit holder at **his or her**~~their~~ last known address and state the amount of the renewal fee.
 - (b) All license renewals shall be completed on or before June 30 of the year of expiration.
 - (c) All permit renewals shall be completed on or before December 31 of the year of expiration.
 - (d) Each licensee or permit holder is responsible for notifying the board of any address change.
- (3) The failure to renew shall not deprive a licensee or permit holder of the right of renewal, but the fee to be paid for the renewal shall be increased ten percent (10%) for each month or fraction of a month that payment of renewal is delayed. Any licensee or permit holder who fails to renew within one (1) year after expiration shall furnish the board with:
 - (a) Satisfactory evidence of qualification of continued practice. However, the board may require reexamination; and
 - (b) ~~If the licensee or permit holder is a professional land surveyor, }Evidence of completion of continuing education~~~~professional development~~ hours~~for professional land surveyors~~ as required by KRS 322.290.

- (4) No licensee shall be required to pay renewal fees to the board during the time the licensee is on active duty in the Armed Forces of the United States.
- (a) Any licensee who has previously paid any renewal fee covering a period of time spent on active duty shall, upon filing with the board a copy of his or her discharge, be granted a license renewal without the payment of any fee.
 - (b) The free renewal shall be for as many license years as the licensee was on active duty and which were covered in whole or in part by the previous payment of a renewal fee.
 - (c) The continuing ~~education~~~~professional development~~ requirement~~for land surveyors~~ under KRS 322.290 shall be waived for those years the licensee was on active duty.

Section 2. KRS 322.290 is amended to read as follows:

The board shall:

- (1) Administer this chapter;
- (2) Adopt an official seal;
- (3) Provide suitable office quarters at its own expense;
- (4) Adopt and amend all bylaws and rules of procedure, and promulgate administrative regulations, consistent with the Constitution and laws of the state and reasonably necessary for the proper performance of its duties and the regulation and fair conduct of the proceedings before it;
- (5) Appoint an executive director and assistant executive directors and fix their compensation;
- (6) Employ any clerk or other assistants necessary for the proper performance of its work;
- (7) Appoint a general counsel and any assistant general counsel as it deems necessary and fix their compensation;
- (8) Appoint investigatory personnel, as it deems necessary, and fix their compensation;
- (9) Appoint committees of licensees, as it deems necessary, to review issues before the board and make recommendations to the board;
- (10) Make expenditures, as it deems necessary, for any purpose that it considers reasonably necessary for the proper performance of its duties, including paying the expenses of the board's delegates to national conventions of and membership dues to the National Council of Examiners for Engineering and Surveying or other affiliated national boards or societies;
- (11) Adopt and promulgate by administrative regulation a code of professional practice and conduct, which shall be based upon generally recognized principles of professional ethical conduct and binding upon persons licensed under this chapter. A code of professional practice and conduct shall be made known to all licensees and applicants and shall include, but not be limited to, the following objectives:
 - (a) The protection of the public health, safety, and welfare;
 - (b) The maintenance of standards of objectivity, truthfulness, and reliability in public statements;
 - (c) The avoidance of conflicts of interest;
 - (d) The prohibition of solicitation or acceptance of engineering or land surveying work on any basis other than qualifications for the work offered;
 - (e) The prohibition of association with any person engaging in illegal or dishonest activities; and
 - (f) The limitation of professional service to the area of competence of the licensee;
- (12) Adopt appropriate standards of practice;
- (13) Promulgate administrative regulations in accordance with KRS Chapter 13A to establish rules for the use of stamps, seals, and signatures in electronic transactions.
- (14) Bring, in its name, injunctive proceedings in the Franklin Circuit Court to enjoin any person, business entity, or combination thereof in violation of KRS 322.020 or KRS 322.060;~~and~~
- (15) Adopt a program for continuing education for its individual land surveyor licensees. No individual land surveyor licensee shall be permitted to renew his or her license unless the minimum annual continuing

education requirements are met, in addition to any other requirement for renewal. The program for continuing education shall not exceed a total of eight (8) credit clock hours per year and shall not include testing or examination of the licensee in any manner; **and**

- (16) (a) *Adopt a program for continuing education for its individual engineer licensees. No individual engineer licensee shall be permitted to renew his or her license unless the minimum annual continuing education requirements are met, except as provided in paragraph (b) of this subsection, in addition to any other requirement for renewal. The program for continuing education shall not exceed a total of fifteen (15) credit clock hours per year and shall not include testing or examination of the licensee in any manner.*
- (b) *Any person licensed under this chapter as a professional engineer prior to January 1, 1972, who has maintained his or her license in good standing since becoming licensed shall not be subject to any continuing education requirements.*

Approved March 19, 2007.

CHAPTER 17

(SB 91)

AN ACT relating to fertilizer.

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

Section 1. KRS 217B.270 is amended to read as follows:

- (1) The Commonwealth of Kentucky hereby determines that the citizens of the state benefit from a system of safe, effective, and scientifically sound **fertilizer and** pesticide regulation on agricultural and silvicultural land. The Commonwealth further finds that a system of **fertilizer and** pesticide regulation which is consistent, coordinated, and comports with both federal and state technical expertise is essential to the public health, safety, and welfare, and that local regulation of **fertilizer and** pesticides does not materially assist in achieving these benefits.
- (2) No city, town, county, or other political subdivision of the Commonwealth shall adopt or continue in effect any ordinance, resolution, rule, or regulation regarding agriculture and silviculture **fertilizer regulated pursuant to KRS 250.371 and** pesticide sale or use, including without limitation: registration, notification of use, advertising and marketing distribution, applicator training and certification, storage, transportation, disposal, disclosure of confidential information, or product composition.
- (3) Nothing in this section shall be construed to:
 - (a) Abrogate any authority afforded by the state statutes to any program cabinet established under KRS Chapter 12 or any state or federal mandated hazardous materials regulations or fire safety codes and comprehensive hazardous materials management program;
 - (b) **Abrogate the planning and zoning authority granted local government pursuant to KRS Chapter 100; or**
 - (c) **Waive any reporting requirement established by state or federal law or regulation.**

SECTION 2. A NEW SECTION OF KRS 250.361 TO 250.451 IS CREATED TO READ AS FOLLOWS:

- (1) **No city, town, county, or other political subdivision of the Commonwealth shall adopt or continue in effect any ordinance, resolution, rule, or regulation regarding the registration, packaging, labeling, sale, storage, distribution, use, and application of fertilizers regulated pursuant to KRS 250.371. Local legislation in violation of this section is void and unenforceable.**
- (2) **Nothing in this section shall be construed to:**
 - (a) **Abrogate any authority afforded by the state statutes to any program cabinet established under KRS Chapter 12 or any state or federal mandated hazardous materials regulations or fire safety codes and comprehensive hazardous materials management program;**

- (b) *Abrogate the planning and zoning authority granted local government pursuant to KRS Chapter 100; or*
- (c) *Waive any reporting requirement established by state or federal law or regulation.*

Approved March 19, 2007.

CHAPTER 18

(SB 56)

AN ACT relating to reorganization.

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

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

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

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

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

II. Program cabinets headed by appointed officers:

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

- (g) Office of General Counsel.
- (h) Division of Kentucky State Medical Examiners Office.
- (i) Parole Board.
- (j) Kentucky State Corrections Commission.
- (k) Commission on Correction and Community Service.
- 2. Education Cabinet:
 - (a) Office of the Secretary.
 - (b) Office of Legal Services.
 - 1. Client Assistance Program.
 - (c) Office of Communication.
 - (d) Office of Legislative and Intergovernmental Affairs.
 - (e) Office of Budget and Administration.
 - 1. Division of Human Resources.
 - 2. Division of Administrative Services.
 - 3. Division of Technology Services.
 - (f) Board of Directors for the Center for School Safety.
 - (g) Council on Postsecondary Education.
 - 1. Foundation for Adult Education.
 - (h) Department of Education.
 - 1. Kentucky Board of Education.
 - (i) Department for Libraries and Archives.
 - (j) Department of Workforce Investment.
 - 1. Office for the Blind.
 - 2. Office of Vocational Rehabilitation.
 - 3. Office of Career and Technical Education.
 - 4. Office of Employment and Training.
 - (k) Foundation for Workforce Development.
 - (l) Kentucky Office for the Blind State Rehabilitation Council.
 - (m) Kentucky Technical Education Personnel Board.
 - (n) Kentucky Workforce Investment Board.
 - (o) Statewide Council for Vocational Rehabilitation.
 - (p) Statewide Independent Living Council.
 - (q) Unemployment Insurance Commission.
 - (r) Education Professional Standards Board.
 - 1. Division of Educator Preparation.
 - 2. Division of Certification.
 - 3. Division of Professional Learning and Assessment.
 - 4. Division of Legal Services.

- (s) Kentucky Commission on the Deaf and Hard of Hearing.
- (t) Kentucky Educational Television.
- (u) Kentucky Environmental Education Council.
- 3. Environmental and Public Protection Cabinet:
 - (a) Office of the Secretary.
 - 1. Office of Legislative and Intergovernmental Affairs.
 - 2. Office of Communications and Public Outreach.
 - 3. Office of Regulatory Affairs.
 - 4. Office of Legal Services.
 - 5. Office of Administrative and Information Services.
 - 6. Office of Administrative Hearings.
 - 7. Office of Inspector General.
 - 8. Mine Safety Review Commission.
 - 9. Workers' Compensation Board.
 - 10. Kentucky State Nature Preserves Commission.
 - 11. Kentucky Environmental Quality Commission.
 - 12. Kentucky Occupational Safety and Health Review Commission.
 - (b) Department for Environmental Protection.
 - 1. Office of the Commissioner.
 - 2. Division of Air Quality.
 - 3. Division of Water.
 - 4. Division of Environmental Services.
 - 5. Division of Waste Management.
 - 6. Division of Enforcement.
 - 7. Division of Compliance Assistance.
 - (c) Department for Natural Resources.
 - 1. Office of the Commissioner.
 - 2. Office of Technical and Administrative Support.
 - 3. Division of Mine Permits.
 - 4. Division of Mine Reclamation and Enforcement.
 - 5. Division of Abandoned Mine Lands.
 - 6. Division of Oil and Gas Conservation.
 - 7. Office of Mine Safety and Licensing.
 - 8. Division of Forestry.
 - 9. Division of Conservation.
 - (d) Department of Public Protection.
 - 1. Office of the Commissioner.
 - 2. Division of Administrative Services.

3. Crime Victims Compensation Board.
4. Board of Claims.
5. Board of Tax Appeals.
6. Kentucky Boxing and Wrestling Authority.
7. Kentucky Horse Racing Authority.
8. Kentucky Public Service Commission.
9. Office of Alcoholic Beverage Control.
10. Office of Charitable Gaming.
11. Office of Financial Institutions.
12. Office of Housing, Buildings and Construction.
13. Office of Insurance.
- (e) Department of Labor.
 1. Office of the Commissioner.
 2. Office of Occupational Safety and Health.
 3. Office of Labor Management Relations and Mediation.
 4. Office of Workplace Standards.
 5. Office of Workers' Claims.
 6. Workers' Compensation Funding Commission.
 7. Kentucky Labor Management Advisory Council.
 8. Occupational Safety and Health Standards Board.
 9. Prevailing Wage Review Board.
 10. Kentucky Employees Insurance Association.
 11. Apprenticeship and Training Council.
 12. State Labor Relations Board.
 13. Workers' Compensation Advisory Council.
 14. Workers' Compensation Nominating Commission.
 15. Employers' Mutual Insurance Authority.
 16. Division of Administrative Services.
4. Transportation Cabinet:
 - (a) Department of Highways.
 1. Office of Program Planning and Management.
 2. Office of Project Development.
 3. Office of Construction and Operations.
 4. Office of Intermodal Programs.
 5. Highway District Offices One through Twelve.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Aviation.

- (e) Department of Intergovernmental Programs.
 - 1. Office of Transportation Enhancement Programs.
 - 2. Office of Rural and Secondary Roads.
- (f) Office of the Secretary.
 - 1. Office of Legislative and Intergovernmental Affairs.
 - 2. Office of Public Affairs.
 - 3. Office of Transportation Delivery.
 - 4. Office for Business and Occupational Development.
 - 5. Office of Budget and Fiscal Management.
 - 6. Office of Legal Services.
 - 7. Office of Inspector General.
 - 8. Office of the Transportation Operations Center.
 - 9. Office of Personnel Management.
- 5. Cabinet for Economic Development:
 - (a) Office of Administration and Support.
 - (b) Department for New Business Development.
 - (c) Department of Financial Incentives.
 - (d) Department for Existing Business Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
 - (g) Office of Research and Information Technology.
 - (h) Department of Commercialization and Innovation.
 - (i) Office of Legal Services.
 - (j) Commission on Small Business Advocacy.
- 6. Cabinet for Health and Family Services:
 - (a) Department for Public Health.
 - (b) Department for Medicaid Services.
 - (c) Department for Mental Health and Mental Retardation Services.
 - (d) Kentucky Commission for Children with Special Health Care Needs.
 - (e) Office of Health Policy.
 - (f) Office of the Secretary.
 - (g) Office of Legal Services.
 - (h) Office of Inspector General.
 - (i) Office of Legislative and Public Affairs.
 - (j) Department for Community Based Services.
 - (k) Department for Disability Determination Services.
 - (l) Office of the Ombudsman.
 - (m) Department for Human Support Services.

- (n) Kentucky Commission on Community Volunteerism and Service.
 - (o) Office of Fiscal Services.
 - (p) Office of Human Resource Management.
 - (q) Office of Technology.
 - (r) Office of Contract Oversight.
 - (s) Governor's Office of Wellness and Physical Activity.
7. Finance and Administration Cabinet:
- (a) Office of General Counsel.
 - (b) Office of the Controller.
 - (c) Office of Administrative Services.
 - (d) Office of Public Information.
 - (e) Department for Facilities and Support Services.
 - (f) Department of Revenue.
 - (g) Commonwealth Office of Technology.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Savings Bond Authority.
 - (j) Office of Equal Employment Opportunity and Contract Compliance.
 - (k) County Officials Compensation Board.
 - (l) Kentucky Employees Retirement Systems.
 - (m) Commonwealth Credit Union.
 - (n) State Investment Commission.
 - (o) Kentucky Housing Corporation.
 - (p) Kentucky Local Correctional Facilities Construction Authority.
 - (q) Kentucky Turnpike Authority.
 - (r) Historic Properties Advisory Commission.
 - (s) Kentucky Tobacco Settlement Trust Corporation.
 - (t) State Board for Proprietary Education.
 - (u) Kentucky Higher Education Assistance Authority.
 - (v) Kentucky River Authority.
 - (w) Kentucky Teachers' Retirement System Board of Trustees.
8. Commerce Cabinet:
- (a) Department of Tourism.
 - (1) Division of Tourism Services.
 - (2) Division of Marketing and Advertising.
 - (3) Division of Parks Marketing.
 - (b) Kentucky Department of Parks.
 - (1) Division of Information Technology.
 - (2) Division of Personnel and Payroll.

- (3) Division of Financial Operations.
- (4) Division of Facilities Management.
- (5) Division of ***Facilities Maintenance***~~[Project Administration]~~.
- (6) Division of Customer Services.
- (7) Division of Recreation.
- (8) Division of Golf Courses.
- (9) Division of Food Services.
- (10) Division of Rangers.
- (11) Division of Eastern Parks.
- (12) Division of Southern Parks.
- (13) Division of Western Parks.
- (c) Department of Fish and Wildlife Resources.
 - (1) Division of Law Enforcement.
 - (2) Division of Administrative Services.
 - (3) Division of Engineering.
 - (4) Division of Fisheries.
 - (5) Division of Information and Education.
 - (6) Division of Wildlife.
 - (7) Division of Public Affairs.
- (d) Kentucky Horse Park.
 - (1) Division of Support Services.
 - (2) Division of Buildings and Grounds.
 - (3) Division of Operational Services.
- (e) Kentucky State Fair Board.
 - (1) Division of Expositions and Admission.
 - (2) Division of Kentucky Fair and Exposition Center Operations.
 - (3) Division of Commonwealth Convention Center.
 - (4) Division of Public Relations and Media.
 - (5) Division of Administrative Services.
 - (6) Division of Personnel Management and Staff Development.
 - (7) Division of Sales.
 - (8) Division of Security and Traffic Control.
- (f) Office of the Secretary.
- (g) Office of Finance and Administration.
- (h) Office of Legal Affairs.
- (i) Office of Intergovernmental Affairs.
- (j) Office of Human Resources.
- (k) Office of Public Affairs and Constituent Services.

- (l) Office of Information Technology.
 - (m) Office of the Kentucky Sports Authority.
 - (1) Kentucky Sports Authority Board.
 - (n) Office of Creative Services.
 - (o) Office of Capital Plaza Operations.
 - (p) Office of Energy Policy.
 - (1) Energy Policy Advisory Council.
 - (q) Office of Arts and Cultural Heritage.
 - (r) Kentucky African-American Heritage Commission.
 - (s) Kentucky Foundation for the Arts.
 - (t) Kentucky Humanities Council.
 - (u) Kentucky Heritage Council.
 - (v) Kentucky Arts Council.
 - (w) Kentucky Historical Society.
 - (1) Division of Museums.
 - (2) Division of Oral History and Educational Outreach.
 - (3) Division of Research and Publications.
 - (4) Division of Administration.
 - (x) Kentucky Center for the Arts.
 - (1) Division of Governor's School for the Arts.
 - (y) Kentucky Artisans Center at Berea.
 - (z) Martin Luther King Commission.
 - (aa) Northern Kentucky Convention Center.
 - (ab) Eastern Kentucky Exposition Center.
9. Personnel Cabinet:
- (a) Office of the Secretary.
 - (b) Department for Personnel Administration.
 - (c) Office for Employee Relations.
 - (d) Kentucky Public Employees Deferred Compensation Authority.
 - (e) Office of Administrative Services.
 - (f) Office of Legal Services.
 - (g) Office of Government Training.
 - (h) Department for Employee Insurance.
- III. Other departments headed by appointed officers:
- 1. Department of Military Affairs.
 - 2. Department for Local Government.
 - 3. Kentucky Commission on Human Rights.
 - 4. Kentucky Commission on Women.

5. Department of Veterans' Affairs.
6. Kentucky Commission on Military Affairs.
7. Office of Minority Empowerment.
8. Governor's Council on Wellness and Physical Activity.

Section 2. The General Assembly confirms Executive Order 2006-1505, dated December 5, 2006, to the extent it is not otherwise confirmed or superseded by this Act.

Approved March 19, 2007.

CHAPTER 19

(SB 43)

AN ACT relating to human trafficking.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 422 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Confidential communication" means information transmitted between the victim and the caseworker in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the human trafficking counselor is consulted and includes all information regarding the facts and circumstances involving the trafficking;*
- (b) *"Holder of the privilege" means the victim when he or she has no guardian or conservator, or a guardian or conservator of the victim when the victim has a guardian or conservator;*
- (c) *"Trafficking victim counselor" includes any of the following:*
 1. *A counselor, as that term is defined in Rule 506 of the Kentucky Rules of Evidence;*
 2. *A psychotherapist as that term is defined in Rule 507 of the Kentucky Rules of Evidence; and*
 3. *A person employed and supervised by one of the persons specified in this paragraph to render services to human trafficking victims and who has received forty (40) hours of training in the history of human trafficking, civil and criminal law as it relates to human trafficking, societal attitudes towards human trafficking, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of human trafficking victims, and referral services available to human trafficking victims.*

(2) *A human trafficking victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communication made to a trafficking victim counselor for the purpose of receiving counseling, therapy, services, information or treatment related to human trafficking.*

(3) *A human trafficking caseworker shall inform a trafficking victim of any applicable limitations on confidentiality of communications between the victim and the caseworker. This information may be given orally.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

A victim of human trafficking shall not be held in a detention center, jail, or other secure facility pending trial for an offense arising from the human trafficking situation except where the incarceration is found to be the least restrictive alternative to securing the appearance of that person before the court or the release of the person under any other reasonable condition would be a clear threat to public safety.

Section 3. KRS 506.120 is amended to read as follows:

- (1) A person, with the purpose to establish or maintain a criminal syndicate or to facilitate any of its activities, shall not do any of the following:

- (a) Organize or participate in organizing a criminal syndicate or any of its activities;
 - (b) Provide material aid to a criminal syndicate or any of its activities, whether such aid is in the form of money or other property, or credit;
 - (c) Manage, supervise, or direct any of the activities of a criminal syndicate, at any level of responsibility;
 - (d) Knowingly furnish legal, accounting, or other managerial services to a criminal syndicate;
 - (e) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of, any offense of a type in which a criminal syndicate engages on a continuing basis;
 - (f) Commit, or conspire or attempt to commit or act as an accomplice in the commission of, any offense of violence;
 - (g) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of bribery in violation of KRS Chapters 518 or 521, or KRS 119.205, 121.025, 121.055, 524.070, 156.465, 45A.340, 63.090, 6.080, 18A.145, or 244.600.
- (2) Whoever violates this section is guilty of engaging in organized crime, which shall be a Class B felony.
- (3) As used in this section "criminal syndicate" means five (5) or more persons collaborating to promote or engage in any of the following on a continuing basis:
- (a) Extortion or coercion in violation of KRS 514.080 or 521.020;
 - (b) Engaging in, promoting, or permitting prostitution *or human trafficking* in violation of KRS Chapter 529;
 - (c) Any theft offense as defined in KRS Chapter 514;
 - (d) Any gambling offense as defined in KRS 411.090, KRS Chapter 528, or Section 226 of the Constitution;
 - (e) Illegal trafficking in controlled substances as prohibited by KRS Chapter 218A, in intoxicating or spirituous liquor as defined in KRS Chapters 242 or 244, or in destructive devices or booby traps as defined in KRS Chapter 237;
 - (f) Lending at usurious interest, and enforcing repayment by illegal means in violation of KRS Chapter 360.

Section 4. KRS 529.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Advancing prostitution" -- A person "advances prostitution" when acting other than as a prostitute or as a patron thereof, he knowingly causes or aids a person to engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any conduct designed to institute, aid or facilitate an act or enterprise of prostitution; ~~§~~
- (2) ***"Commercial sexual activity" means prostitution, participation in the production of obscene material as set out in KRS Chapter 531, or engaging in a sexually explicit performance;***
- (3) ***"Forced labor or services" means labor or services that are performed or provided by another person and that are obtained through force, fraud, or coercion;***
- (4) ***"Force, fraud, or coercion" may only be accomplished by the same means and methods as a person may be restrained under KRS 509.010;***
- (5) ***"Human trafficking" refers to criminal activity whereby one (1) or more persons are subjected to engaging in:***
 - (a) ***Forced labor or services; or***
 - (b) ***Commercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion;***

- (6) ***“Labor” means work of economic or financial value;***
- (7)~~(2)~~ ***“Profiting from prostitution” -- A person “profits from prostitution” when acting other than as a prostitute receiving compensation for personally rendered prostitution services, he knowingly accepts or receives or agrees to accept or receive money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in proceeds of prostitution activity;***~~;~~
- (8) ***“Services” means an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor;***
- (9)~~(3)~~ ***“Sexual conduct” means sexual intercourse or any act of sexual gratification involving the sex organs;***
and
- (10) ***“Sexually-explicit performance” means a performance of sexual conduct involving:***
- (a) ***Acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse, actual or simulated;***
 - (b) ***Physical contact with, or willful or intentional exhibition of the genitals;***
 - (c) ***Flagellation or excretion for the purpose of sexual stimulation or gratification; or***
 - (d) ***The exposure, in an obscene manner, of the unclothed or apparently unclothed human male or female genitals, pubic area or buttocks, or the female breast, whether or not subsequently obscured by a mark placed thereon, or otherwise altered, in any resulting motion picture, photograph or other visual representation, exclusive of exposure portrayed in matter of a private, family nature not intended for distribution outside the family.***

SECTION 5. A NEW SECTION OF KRS CHAPTER 529 IS CREATED TO READ AS FOLLOWS:

- (1) ***A person is guilty of human trafficking when the person intentionally subjects one (1) or more persons to human trafficking.***
- (2)
 - (a) ***Human trafficking is a Class C felony unless it involves serious physical injury to a trafficked person, in which case it is a Class B felony.***
 - (b) ***If the victim of human trafficking is under eighteen (18) years of age, the penalty for the offense shall be one level higher than the level otherwise specified in this section.***

SECTION 6. A NEW SECTION OF KRS CHAPTER 529 IS CREATED TO READ AS FOLLOWS:

- (1) ***A person is guilty of promoting human trafficking when the person intentionally:***
 - (a) ***Benefits financially or receives anything of value from knowing participation in human trafficking; or***
 - (b) ***Recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, or provide, or obtain by any means, another person, knowing that the person will be subject to human trafficking.***
- (2) ***Promoting human trafficking is a Class D felony, unless a victim of the trafficking is under eighteen (18), in which case it is a Class C felony.***

Section 7. KRS 529.040 is amended to read as follows:

- (1) A person is guilty of promoting prostitution ~~[in the second degree]~~ when he knowingly advances or profits from prostitution ~~[by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two (2) or more prostitutes].~~
- (2) Promoting prostitution~~[in the second degree]~~ is a Class A misdemeanor, unless the person managed, supervised, controlled or owned, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two (2) or more prostitutes, in which case it is a Class D felony.

Section 8. KRS 17.500 is amended to read as follows:

As used in KRS 17.500 to 17.580:

- (1) "Approved provider" means a mental health professional licensed or certified in Kentucky whose scope of practice includes providing mental health treatment services and who is approved by the Sex Offender Risk Assessment Advisory Board, under administrative regulations promulgated by the board, to provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020;
- (2) "Cabinet" means the Justice Cabinet;
- (3) (a) Except as provided in paragraph (b) of this subsection, "criminal offense against a victim who is a minor" means any of the following offenses if the victim is under the age of eighteen (18) at the time of the commission of the offense:
 1. Kidnapping, as set forth in KRS 509.040, except by a parent;
 2. Unlawful imprisonment, as set forth in KRS 509.020, except by a parent;
 3. Sex crime;
 4. Promoting a sexual performance of a minor, as set forth in KRS 531.320;
 5. ***Human trafficking involving commercial sexual activity as set forth in Section 5 of this Act;***
 6. Promoting prostitution, as set forth in ***Section 7 of this Act***~~KRS 529.030, 529.040, and 529.050~~, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18);
 6. Use of a minor in a sexual performance, as set forth in KRS 531.310;
 7. Sexual abuse, as set forth in KRS 510.120 and 510.130;
 8. Unlawful transaction with a minor in the first degree as set forth in KRS 530.064(1)(a);
 9. Any offense involving a minor or depictions of a minor as set forth in KRS Chapter 531;
 10. Any attempt to commit any of the offenses described in subparagraphs 1. to 9. of this paragraph; and
 11. Solicitation to commit any of the offenses described in subparagraphs 1. to 9. of this paragraph;
- (b) Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense;
- (4) "Law enforcement agency" means any lawfully organized investigative agency, sheriff's office, police unit, or police force of federal, state, county, urban-county government, charter county, city, consolidated local government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws;
- (5) "Registrant" means:
 - (a) Any person eighteen (18) years of age or older at the time of the offense or any youthful offender, as defined in KRS 600.020, who has committed:
 1. A sex crime; or
 2. A criminal offense against a victim who is a minor; or
 - (b) Any person required to register under KRS 17.510; or
 - (c) Any sexually violent predator; or
 - (d) Any person whose sexual offense has been diverted pursuant to KRS 533.250, until the diversionary period is successfully completed;
- (6) "Registrant information" means the name, including any lawful name change together with the previous name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, fingerprints, a photograph, aliases used, residence, a brief description of the crime or crimes committed, and other

information the cabinet determines, by administrative regulation, may be useful in the identification of registrants;

- (7) "Residence" means any place where a person sleeps. For the purposes of this statute, a registrant may have more than one (1) residence. A registrant is required to register each residence address;
- (8) "Sex crime" means:
 - (a) A felony offense defined in KRS Chapter 510, or KRS 530.020, 530.064(1)(a), 531.310, or 531.320;
 - (b) A felony attempt to commit a felony offense specified in paragraph (a) of this subsection; or
 - (c) A federal felony offense, a felony offense subject to a court-martial of the United States Armed Forces, or a felony offense from another state or a territory where the felony offense is similar to a felony offense specified in paragraph (a) of this subsection;
- (9) "Sexual offender" means any person convicted of, pleading guilty to, or entering an Alford plea to a sex crime as defined in this section, as of the date the verdict is entered by the court;
- (10) "Sexually violent predator" means any person who has been subjected to involuntary civil commitment as a sexually violent predator, or a similar designation, under a state, territory, or federal statutory scheme;
- (11) "The board" means the Sex Offender Risk Assessment Advisory Board created under KRS 17.554; and
- (12) "Victim" has the same meaning as in KRS 421.500.

Section 9. KRS 413.249 is amended to read as follows:

- (1) As used in this section:
 - (a) "Childhood sexual assault" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a felony in KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, ***Section 5 of this Act where the offense involves commercial sexual activity***~~529.030~~, 530.020, 530.064, 531.310, or 531.320. No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action for redress of childhood sexual assault;
 - (b) "Childhood sexual abuse" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a misdemeanor in KRS 510.120, KRS 510.130, KRS 510.140, or KRS 510.150. No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action for redress of childhood sexual abuse;
 - (c) "Child" means a person less than eighteen (18) years old; and
 - (d) "Injury or illness" means either a physical or psychological injury or illness.
- (2) A civil action for recovery of damages for injury or illness suffered as a result of childhood sexual abuse or childhood sexual assault shall be brought before whichever of the following periods last expires:
 - (a) Within five (5) years of the commission of the act or the last of a series of acts by the same perpetrator;
 - (b) Within five (5) years of the date the victim knew, or should have known, of the act; or
 - (c) Within five (5) years after the victim attains the age of eighteen (18) years.
- (3) If a complaint is filed alleging that an act of childhood sexual assault or childhood sexual abuse occurred more than five (5) years prior to the date that the action is commenced, the complaint shall be accompanied by a motion to seal the record and the complaint shall immediately be sealed by the clerk of the court. The complaint shall remain sealed until:
 - (a) The court rules upon the motion to seal;
 - (b) Any motion to dismiss under CR 12.02 is ruled upon, and if the complaint is dismissed, the complaint and any related papers or pleadings shall remain sealed unless opened by a higher court; or
 - (c) The defendant files an answer and a motion to seal the record upon grounds that a valid factual defense exists, to be raised in a motion for summary judgment pursuant to CR 56. The record shall remain sealed by the clerk until the court rules upon the defendant's motion to close the record. If the court grants the motion to close, the record shall remain sealed until the defendant's motion for summary

judgment is granted. The complaint, motions, and other related papers or pleadings shall remain sealed unless opened by a higher court.

Section 10. KRS 421.350 is amended to read as follows:

- (1) This section applies only to a proceeding in the prosecution of an offense, including but not limited to an offense under KRS 510.040 to 510.150, *Section 5, 6, or 7 of this Act* ~~{529.030 to 529.050}~~, 529.070, 530.020, 530.060, 530.064(1)(a), 531.310, 531.320, 531.370, and all dependency proceedings pursuant to KRS Chapter 620, when the act is alleged to have been committed against a child twelve (12) years of age or younger, and applies to the statements or testimony of that child or another child who is twelve (12) years of age or younger who witnesses one of the offenses included in this subsection.
- (2) The court may, on the motion of the attorney for any party and upon a finding of compelling need, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding. Only the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence the court finds would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.
- (3) The court may, on the motion of the attorney for any party and upon a finding of compelling need, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (3) of this section may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by subsection (3) of this section. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant. The court shall also ensure that:
 - (a) The recording is both visual and oral and is recorded on film or videotape or by other electronic means;
 - (b) The recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;
 - (c) Each voice on the recording is identified; and
 - (d) Each party is afforded an opportunity to view the recording before it is shown in the courtroom.
- (4) If the court orders the testimony of a child to be taken under subsection (2) or (3) of this section, the child may not be required to testify in court at the proceeding for which the testimony was taken.
- (5) For the purpose of subsections (2) and (3) of this section, "compelling need" is defined as the substantial probability that the child would be unable to reasonably communicate because of serious emotional distress produced by the defendant's presence.

Section 11. KRS 439.3401 is amended to read as follows:

- (1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of:
 - (a) A capital offense;
 - (b) A Class A felony;
 - (c) A Class B felony involving the death of the victim or serious physical injury to a victim;
 - (d) The commission or attempted commission of a felony sexual offense described in KRS Chapter 510;
 - (e) Use of a minor in a sexual performance as described in KRS 531.310;
 - (f) Promoting a sexual performance by a minor as described in KRS 531.320;
 - (g) Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);

- (h) ***Human trafficking under Section 5 of this Act involving commercial sexual activity where the victim is a minor***~~[Promoting prostitution in the first degree as described in KRS 529.030(1)(b)]~~;
- (i) Criminal abuse in the first degree as described in KRS 508.100;
- (j) Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;
- (k) Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or
- (l) Robbery in the first degree.

The court shall designate in its judgment if the victim suffered death or serious physical injury.

- (2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole or imprisonment for life without benefit of probation or parole), or a Class A felony and receives a life sentence, or to death and his sentence is commuted to a life sentence shall not be released on probation or parole until he has served at least twenty (20) years in the penitentiary. Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment.
- (3) A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony who is a violent offender shall not be released on probation or parole until he has served at least eighty-five percent (85%) of the sentence imposed.
- (4) A violent offender may not be awarded any credit on his sentence authorized by KRS 197.045(1), except the educational credit. A violent offender may, at the discretion of the commissioner, receive credit on his sentence authorized by KRS 197.045(3). In no event shall a violent offender be given credit on his sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.
- (5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.
- (6) This section shall apply only to those persons who commit offenses after July 15, 1998.
- (7) For offenses committed prior to July 15, 1998, the version of this statute in effect immediately prior to that date shall continue to apply.
- (8) The provisions of subsection (1) of this section extending the definition of "violent offender" to persons convicted of or pleading guilty to robbery in the first degree shall apply only to persons whose crime was committed after July 15, 2002.

Section 12. KRS 510.155 is amended to read as follows:

- (1) It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of procuring or promoting the use of a minor, or a peace officer posing as a minor if the person believes that the peace officer is a minor or is wanton or reckless in that belief, for any activity in violation of KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, ***Section 5 of this Act where that offense involves commercial sexual activity***~~[529.030]~~, or 530.064(1)(a), or KRS Chapter 531.
- (2) No person shall be convicted of this offense and an offense specified in KRS 506.010, 506.030, 506.040, or 506.080 for a single course of conduct intended to consummate in the commission of the same offense with the same minor or peace officer.
- (3) A violation of this section is punishable as a Class D felony.

Section 13. KRS 530.064 is amended to read as follows:

- (1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:
 - (a) Illegal sexual activity; or
 - (b) Illegal controlled substances activity other than activity involving marijuana;

Except those offenses involving minors in KRS Chapter 531 and *in Section 5 of this Act where that offense involves commercial sexual activity*~~[KRS 529.030]~~.

- (2) Unlawful transaction with a minor in the first degree is a:
 - (a) Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
 - (b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
 - (c) Class A felony if the minor so used incurs physical injury thereby.

Section 14. KRS 531.330 is amended to read as follows:

- (1) For purposes of *Section 5 or 7 of this Act where the offense involves commercial sexual activity and for the purposes of* ~~KRS 529.030,~~ 530.070, 531.080 and 531.300 to 531.370, any person who appears to be under the age of eighteen (18), or under the age of sixteen (16), shall be presumed to be under the age of eighteen (18), or under the age of sixteen (16), as the case may be.
- (2) In any prosecution under *Section 5 or 7 of this Act where the offense involves commercial sexual activity by a minor and in any prosecution under* ~~KRS 529.030,~~ 530.070, 531.080 and 531.300 to 531.370 the defendant may prove in exculpation that he in good faith reasonably believed that the person involved in the performance was not a minor.
- (3) The presumption raised in subsection (1) of this section may be rebutted by any competent evidence.

Section 15. KRS 532.043 is amended to read as follows:

- (1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, *Section 5 of this Act involving commercial sexual activity* ~~KRS 529.030,~~ 530.020, 530.064(1)(a), 531.310, or 531.320 shall be subject to a period of conditional discharge following release from:
 - (a) Incarceration upon expiration of sentence; or
 - (b) Completion of parole.
- (2) The period of conditional discharge shall be five (5) years.
- (3) During the period of conditional discharge, the defendant shall:
 - (a) Be subject to all orders specified by the Department of Corrections; and
 - (b) Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.
- (4) Persons under conditional discharge pursuant to this section shall be subject to the supervision of the Division of Probation and Parole.
- (5) If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing to the Commonwealth's attorney in the county of conviction. The Commonwealth's attorney may petition the court to revoke the defendant's conditional discharge and reincarcerate the defendant as set forth in KRS 532.060.
- (6) The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea after July 15, 1998.

Section 16. KRS 532.045 is amended to read as follows:

- (1) As used in this section:
 - (a) "Position of authority" means but is not limited to the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility, a

holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health-care provider, or employer;

- (b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and
 - (c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.
- (2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating KRS 510.050, 510.080, ***Section 5 of this Act where the offense involves commercial sexual activity, Section 7 of this Act***~~[529.030 to 529.050]~~, 529.070, 530.020, 531.310, 531.320, 531.370, or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:
- (a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;
 - (b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;
 - (c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;
 - (d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;
 - (e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;
 - (f) A person convicted of kidnapping a minor in violation of the Kentucky Penal Code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;
 - (g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;
 - (h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or
 - (i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

Nothing in this section shall be construed to prohibit the additional period of five (5) years' conditional discharge required by KRS 532.043.

- (3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of the comprehensive sex offender presentence evaluation of the offender performed by an approved provider, as defined in KRS 17.500 or the Department of Corrections. The court shall use the comprehensive sex offender presentence evaluation in determining the appropriateness of probation or conditional discharge.
- (4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board.
- (5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.

- (6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.
- (7) The comprehensive sex offender presentence evaluation and all communications relative to the comprehensive sex offender presentence evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440. The comprehensive sex offender presentence evaluation shall be filed under seal and shall not be made a part of the court record subject to review in appellate proceedings and shall not be made available to the public.
- (8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any comprehensive sex offender presentence evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel and the Commonwealth's attorney a copy of the comprehensive sex offender presentence evaluation. It shall not be necessary to disclose the sources of confidential information.
- (9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

Section 17. The following KRS sections are repealed:

529.030 Promoting prostitution in the first degree.

529.050 Promoting prostitution in the third degree.

Approved March 19, 2007.

CHAPTER 20

(SB 60)

AN ACT relating to uniform financial information reports for local governments.

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

Section 1. KRS 65.900 is amended to read as follows:

As used in KRS 65.905 to 65.920, unless the context requires otherwise:

- (1) "City" means every city organized and governed under the mayor-alderman form of government pursuant to KRS Chapter 83, every city organized and governed under the mayor-council form of government pursuant to KRS Chapter 83A, every city organized and governed under the commission form of government pursuant to KRS Chapter 83A, every city organized and governed under the city manager form of government pursuant to KRS Chapter 83A, ***every consolidated local government organized and governed under the consolidated local government form of government pursuant to KRS Chapter 67C***, and every urban-county government organized and governed under the urban-county form of government pursuant to KRS Chapter 67A.
- (2) "County" means any of Kentucky's one hundred and twenty (120) counties.
- (3) "Special district" means any district with ad valorem taxing powers including, but not limited to, those specified in the following KRS statutes: KRS 75.010 to 75.260, KRS 76.274 to 76.279, KRS 104.450 to 104.680, KRS 107.310 to 107.500, KRS 108.080 to 108.180, KRS 109.115 to 109.190, KRS 147.610 to 147.710, KRS 164.605 to 164.675, KRS 173.450 to 173.650, KRS 173.710 to 173.800, KRS 179.700 to 179.990, KRS 210.370 to 210.480, KRS 212.720 to 212.760, KRS 216.310 to 216.360, KRS 220.010 to 220.613, KRS 262.010 to 262.660, KRS 262.700 to 262.990, KRS 266.010 to 266.990, KRS 268.010 to 268.990, and KRS 269.100 to 269.270.
- (4) "Local government" includes the terms city, county, ***consolidated local government, urban-county government***, and special district as defined in this section.
- (5) "Lease-purchase agreement" means an agreement to lease or to lease and purchase major items of property, equipment, or services estimated to cost fifty thousand dollars (\$50,000) or more, and two hundred thousand dollars (\$200,000) or more for the construction or installation of a building or a utility.

Section 2. KRS 65.905 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, each local government as defined in KRS 65.900 shall annually, after the close of the fiscal year, complete a uniform financial information report. The report shall be submitted to the Department for Local Government by May 1 immediately following the close of the fiscal year. The Department for Local Government shall immediately send one (1) copy of the uniform financial information report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.
- (2) The final quarterly report filed by a county within fifteen (15) days after the end of the last quarter of the fiscal year, in accordance with KRS 68.360(2), shall be deemed the uniform financial information report for that county for purposes of compliance with KRS 65.900 to 65.925~~[- if that quarterly report contains, at a minimum, all information required by KRS 65.910].~~
- (3) Each city may have the uniform financial information report completed by its selected auditor as part of the terms and conditions of the written agreement between the city and the auditor in accordance with KRS 91A.040. Each county may have the uniform financial information report completed by its auditor selected in accordance with KRS 43.070 or 64.810. Each special district may have the uniform financial information report completed by its auditor selected in accordance with KRS 65.065. If a city does not use the auditor to complete the uniform financial information report, it shall by order designate an elected or nonelected official to be responsible for annually completing the report and submitting it to the Department for Local Government. If a local government has any agency, board, or commission that receives any funding from the local government, but conducts its operations on an autonomous or semi-autonomous basis, the local government shall note on the uniform financial information report the name of the agency, board, or commission; the mailing address of the agency, board, or commission; and the dollar amount annually appropriated by the local government to the agency, board, or commission.
- (4) The Department for Local Government shall by administrative regulation prescribe the format of the uniform financial information report. The department shall attempt to coordinate and combine efforts with the United States Bureau of the Census in the development of the format of the uniform financial information report so that a single report will meet the needs of both agencies and fulfill the requirements of KRS 65.900 to 65.925. Regardless of any agreement between the Department for Local Government and the United States Bureau of the Census, the department shall maintain responsibility for assuring that a uniform financial information report is distributed to each local government as soon as practicable after the close of each fiscal year, but in no event later than one hundred twenty (120) days prior to the required submission date of May 1.
- (5) The Department for Local Government shall use the uniform financial information report to replace as many financial information forms as possible that local governments are currently required to complete and submit to the department for use by either the state or federal governments, by consolidating the required information into the uniform report.

Section 3. KRS 65.910 is amended to read as follows:

- (1) The uniform financial information report shall include, but not be limited to, information relating to demographics,~~[- bonded indebtedness,]~~ debt service~~[- requirements]~~, lease-purchase agreements, tax rates and revenues, licenses, permits, fees, utilities, intergovernmental revenues, miscellaneous revenues **and expenses**, charges for services, and all expenditures~~[- as set forth in this section]~~.
- (2)~~[- Demographic information shall include:~~
 - (a) ~~— The name of the unit of local government;~~
 - (b) ~~— The county in which the city or special district is located;~~
 - (c) ~~— The classification of the city;~~
 - (d) ~~— The population of the unit of local government;~~
 - (e) ~~— The form of government of the city; and~~
 - (f) ~~— The area development district in which the unit of local government is located.~~
- (3)~~[- Bonded indebtedness and debt service information shall include:~~
 - (a) ~~— The name of each project listed individually;~~
 - (b) ~~— The type of bond issue used for each project;~~

- ~~(c) The bonded indebtedness of each project;~~
- ~~(d) The debt service requirements of each project; and~~
- ~~(e) The specific source of debt service funds, whether local government appropriations or use of nongovernment funds.~~
- ~~(4) Lease purchase agreement information shall include:~~
 - ~~(a) Purpose of the agreement;~~
 - ~~(b) Identity of the lessor;~~
 - ~~(c) Principal amount of the agreement;~~
 - ~~(d) Interest rate or rates for the agreement;~~
 - ~~(e) Date the local government entered into agreement;~~
 - ~~(f) Length of term of agreement;~~
 - ~~(g) Current annual debt service requirements for agreement; and~~
 - ~~(h) A list of and the purpose of any short term renewal bank notes.~~
- ~~(5) Tax rate and revenue information shall include:~~
 - ~~(a) The compensating tax rate and the maximum tax rate for the current fiscal year and the preceding fiscal year;~~
 - ~~(b) The current fiscal year ad valorem tax rate levied by the local government, the preceding fiscal year revenues collected by the local government, and the assessed property valuation for real property, personal property, and motor vehicles and watercraft; and~~
 - ~~(c) The current fiscal year tax rate levied by the local government and the preceding fiscal year revenues collected by the local government for the following types of taxes:~~
 - ~~1. Occupational license tax on persons;~~
 - ~~2. Occupational license tax on business net profits, gross receipts, or a flat rate;~~
 - ~~3. Insurance premium tax on fire and allied perils, casualty liability only, vehicle, inland marine, health, life, all other risks taxed, minimum tax and company taxable reserves;~~
 - ~~4. Transient room tax;~~
 - ~~5. Restaurant tax;~~
 - ~~6. Bank franchise tax;~~
 - ~~7. Delinquent collections; and~~
 - ~~8. Special purpose and other taxes.~~
- ~~(6) Information on licenses, permits, and fees shall include the amount charged and the preceding fiscal year revenues collected by the local government for the following types of licenses, permits, and fees:~~
 - ~~(a) Alcoholic beverage licenses for the manufacture and sale, distilled spirits and wine, malt beverages, Sunday sales, and regulatory license fee on gross receipts;~~
 - ~~(b) Required sticker fees on automobiles and trucks;~~
 - ~~(c) Motor vehicles fees on taxicabs, truck tractors, semitrailers and trailers;~~
 - ~~(d) Coin operated machines;~~
 - ~~(e) Cable television;~~
 - ~~(f) Building, electrical, and plumbing permits;~~
 - ~~(g) Zoning permits and development impact fees;~~

- ~~(h) — Building, elevator, electrical, plumbing, food, rehabilitation, and any other inspection fees;~~
- ~~(i) — Licensing of electricians and electrical contractors;~~
- ~~(j) — Unloading fees;~~
- ~~(k) — Public service fees for fire protection, police protection;~~
- ~~(l) — Ambulance service franchise fees and ambulance run fees;~~
- ~~(m) — Animal license fees; and~~
- ~~(n) — Any other source of license, permit, or fee.~~

~~— If varying rates or fees are charged based upon classification, volume, value, or other criteria, the local government shall submit a fee chart with the report form.~~

- ~~(7) — Information on utilities shall include the franchise tax or fee, charge for service, user fee or "tap on" fee, and preceding fiscal year revenues collected by the local government on the following utilities:~~
 - ~~(a) — Waterworks;~~
 - ~~(b) — Sewage treatment;~~
 - ~~(c) — Electric light, heat, and power;~~
 - ~~(d) — Gas;~~
 - ~~(e) — Garbage collection for residential, commercial, and industrial customers, and landfill fees;~~
 - ~~(f) — Transit authority; and~~
 - ~~(g) — Any other type of utility.~~

~~— If varying rates or fees are charged based upon classification, volume, value, or other criteria, the local government shall submit a fee chart with the report form.~~

- ~~(8) — Information on intergovernmental revenues shall include the types of intergovernmental revenues received by the local government, preceding fiscal year revenues collected by the local government, and rate and interest requirements for loan repayments that shall include:~~
 - ~~(a) — Kentucky Law Enforcement Foundation Program fund;~~
 - ~~(b) — Professional Firefighters Foundation Program fund;~~
 - ~~(c) — Community development block grant funds;~~
 - ~~(d) — County or municipal road aid;~~
 - ~~(e) — Local government economic assistance funds;~~
 - ~~(f) — Net court revenues;~~
 - ~~(g) — Kentucky Infrastructure Authority funds;~~
 - ~~(h) — Economic development bonds;~~
 - ~~(i) — Kentucky Economic Development Finance Authority funds;~~
 - ~~(j) — Environmental Protection Agency funds;~~
 - ~~(k) — County or city transfers; and~~
 - ~~(l) — Any other source of state or federal funds.~~
- ~~(9) — Information on miscellaneous revenues and charges for services shall include the source of revenue, charge, or fee levied by the local government and preceding fiscal year revenues collected for the following:~~
 - ~~(a) — Parking meter receipts;~~
 - ~~(b) — Parking facility receipts;~~
 - ~~(c) — Parking violation fines;~~

- ~~(d) — Charges for impounded vehicles;~~
- ~~(e) — Sale of abandoned vehicles;~~
- ~~(f) — Delinquent tax bills;~~
- ~~(g) — Fines and forfeitures;~~
- ~~(h) — Penalties and interest;~~
- ~~(i) — Franchise payments for governmental services bid out to the private sector;~~
- ~~(j) — Golf course receipts;~~
- ~~(k) — Parks and recreation;~~
- ~~(l) — Proceeds from sale of seized and forfeited property;~~
- ~~(m) — Rent;~~
- ~~(n) — Interest from investments and dividends; and~~
- ~~(o) — Any other source of revenue or charge for service.~~

- ~~(40)}~~ Information on expenditures shall be listed by total only and indicate the fund from which an appropriation was made. The Department for Local Government shall consult with the Kentucky League of Cities, the Kentucky Association of Counties, the Kentucky Municipal Finance Officers' Association, the Kentucky Society of Certified Public Accountants, and other affected interest groups, as well as local officials in the development of information to be included in the expenditure section of the uniform financial information report.

Section 4. KRS 65.920 is amended to read as follows:

- (1) Any local government that fails to submit annually a uniform financial information report to the Department for Local Government shall be ineligible to receive county or municipal road aid moneys in accordance with KRS 177.360 or 177.366. Any local government receiving road aid moneys in accordance with KRS 177.365 to 177.369 or KRS 177.320 and 177.360 that fails to comply with the provisions of KRS 65.900 to ~~65.920~~~~[65.915]~~ shall immediately have all road aid payments suspended until the local government submits the uniform financial information report to the Department for Local Government.
- (2) If a local government receives payments of money from the Commonwealth and fails to comply with the provisions of KRS 65.900 to ~~65.920~~~~[65.925]~~ or KRS 92.280(1), the state local finance officer may notify those agencies making payments to the local government of noncompliance, and those agencies shall immediately suspend delivery of all payments to the local government except those payments made pursuant to KRS Chapter 154 or KRS 42.4588, until the state local finance officer determines that the local government has complied with the requirements of KRS 65.900 to ~~65.920~~~~[65.925]~~ or KRS 92.280(1).

Section 5. KRS 177.360 is amended to read as follows:

- (1) Except as provided in subsection (5) of this section, the Department of Intergovernmental Programs shall allocate the funds set apart under KRS 177.320(1) for construction, reconstruction, and maintenance of state-maintained secondary and rural highways as follows:
 - (a) One-fifth (1/5) shall be apportioned equally among the one hundred twenty (120) counties.
 - (b) One-fifth (1/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio which the rural population of each county bears to the total rural population of the state. "Rural population" as used here means the population in a county outside cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more as shown by the most recent decennial census of the United States Bureau of the Census, and county population shall be determined by the most recent decennial census of the United States Bureau of the Census.
 - (c) One-fifth (1/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio that the public road mileage outside of cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more bears to the total mileage of such roads for the entire state.
 - (d) Two-fifths (2/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio which the square-mile rural area of the county bears to the total square-mile rural area of the state.

"Rural area" as used here means that area of the county outside of cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more and shown by the most recent decennial census of the United States Bureau of the Census.

- (2) A sum not exceeding six percent (6%) of the allocation provided by KRS 177.320(1) to each county shall be deducted at the beginning of each fiscal year and adjusted quarterly to cover the maintenance, administrative, engineering, and other costs of the program.
- (3) Of the total amount apportioned by the provisions of this section, a sum not exceeding six percent (6%) may be deducted and placed by the Department of Intergovernmental Programs in a special emergency account to be expended at the direction of the commissioner to meet unforeseen emergencies on rural and secondary roads and bridges.
- (4) Apportionments as required by the provisions of this section shall be made on the basis of revenue estimates supplied by the Finance and Administration Cabinet and adjusted quarterly in accordance with the most recent revision of the estimates by the Finance and Administration Cabinet.
- (5) Any county eligible to receive county road aid moneys in accordance with KRS 177.320 and this section shall be required to submit a uniform financial information report to the Department for Local Government in accordance with KRS 65.905 before any payment of county road aid funds shall be made. The Department for Local Government shall notify the Department of Intergovernmental Programs no later than March 1 annually of any county that has not submitted a uniform financial information report. The Department of Intergovernmental Programs shall upon notification by the department immediately suspend all county road aid moneys to the county until the county complies with the provisions of KRS 65.900 to ~~65.920~~~~{65.945}~~ and submits the uniform financial information report to the Department for Local Government. The department shall immediately notify the Department of Intergovernmental Programs to reinstate county road aid moneys to any county affected by this subsection as soon as the county submits the uniform financial information report.

Section 6. KRS 177.366 is amended to read as follows:

- (1) Except as provided in subsection (8) of this section, on and after July 1, 1980, the Finance and Administration Cabinet shall allocate to each incorporated city and "unincorporated urban place" its pro rata share of the funds set apart for construction, reconstruction, and maintenance of urban roads and streets on the basis of the ratio which the population in the incorporated cities and in "unincorporated urban places" bears to the total population in incorporated cities and in "unincorporated urban places" of the state. "Unincorporated urban places" as used here, means an area as defined in KRS 81.015, and any area outside of incorporated cities, which area has a population of 2,500 or more as shown by the most recent decennial census of the United States Bureau of the Census, and all populations shall be determined by the most recent decennial census of the United States.
- (2) Any area which becomes incorporated after December 31, 1970, shall not be eligible to participate in the Municipal Aid Program until the beginning of the second fiscal year following its incorporation and population certification. It shall be the responsibility of the newly incorporated area to provide the Finance and Administration Cabinet with documentation from the United States Bureau of the Census showing the population of the newly incorporated area as it existed at the time of the last decennial census.
- (3) In the event the newly incorporated area cannot obtain a population count from the Bureau of the Census, it shall not be eligible to participate in the Municipal Aid Program until the next decennial census.
- (4) If an incorporated city, whose incorporation took place prior to December 31, 1970, annexes additional area, the population of the annexed area will not be counted in the allocation of municipal aid funds until the beginning of the second fiscal year following annexation and population certification.
- (5) It shall be the responsibility of the incorporated city to provide the Finance and Administration Cabinet with documentation from the United States Bureau of the Census showing the population for the annexed area as it existed at the time of the last decennial census.
- (6) If the incorporated area cannot obtain a population count from the Bureau of the Census, the annexed area's population shall not be eligible to be counted in the distribution of the municipal aid fund. However, the streets included in the annexed areas shall be eligible to receive work through this program.
- (7) Apportionments as required by the provisions of this section shall be made on the basis of revenue estimates supplied by the Office of State Budget Director and shall be adjusted quarterly in accordance with the most recent revision of the estimates by the Office of State Budget Director.

- (8) Any local government eligible to receive municipal road aid moneys pursuant to KRS 177.365 to 177.369 shall be required to submit a uniform financial information report to the Department for Local Government pursuant to KRS 65.905 before any payment of municipal road aid funds shall be made. The Department for Local Government shall notify the Finance and Administration Cabinet no later than March 1 annually of any local government that has not submitted a uniform financial information report. The Finance and Administration Cabinet shall upon notification by the department, immediately suspend all municipal road aid moneys to the local government until the local government complies with the provisions of KRS 65.900 to ~~65.920~~^{65.915} and submits the uniform financial information report to the Department for Local Government. The department shall immediately notify the Finance and Administration Cabinet to reinstate municipal road aid moneys to any local government affected by this subsection as soon as the local government submits the uniform financial information report.

Section 7. The following KRS section is repealed:

65.915 Date of filing first report.

Approved March 19, 2007.

CHAPTER 21

(HCR 141)

A CONCURRENT RESOLUTION urging awareness by educators and the retail community of the special access needs of those living with Crohn's disease.

WHEREAS, Crohn's disease is a chronic disorder that causes inflammation of the digestive or gastrointestinal tract; and

WHEREAS, Crohn's disease, and a related disease, ulcerative colitis, are the two main disease categories that belong to a larger group of illnesses call inflammatory bowel disease; and

WHEREAS, irritable bowel disease impacts 1.4 million patients per year in the U.S., at an annual cost of approximately \$2 billion per year; and

WHEREAS, approximately 30,000 new cases of irritable bowel disease are diagnosed every year; and

WHEREAS, irritable bowel disease is primarily a disease affecting young people and those in the prime of their life; and

WHEREAS, children with inflammatory bowel disease miss school activities and do not have the appropriate access to restrooms during school hours; and

WHEREAS, inflammatory bowel disease patients are at a high risk of developing colorectal cancer; and

WHEREAS, the symptoms of Crohn's disease and inflammatory bowel disease present a barrier to individual freedom, happiness, and productivity; and

WHEREAS, because those with one of these diseases often have an urgent need to use a restroom, Crohn's disease and irritable bowel disease can have implications for employment, social interactions, and self image;

NOW, THEREFORE,

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

Section 1. The Department of Education should work with local school systems to ensure that educators are aware of the impact that living with Crohn's disease and irritable bowel disease has on students with the condition. Educators also should be aware of the special need for access to restrooms by students with the disease in order to ensure that their educational attainment is not disrupted.

Section 2. The retail community also should be aware of the special needs of people living with this condition and the potential need for access to facilities.

Approved March 19, 2007.

CHAPTER 22**(HB 316)**

AN ACT relating to certain tax refund suits and declaring an emergency.

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

Section 1. KRS 134.580 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Agency" means the agency of state government which administers the tax to be refunded or credited.
 - (b) "Overpayment" or "payment where no tax was due" means the tax liability under the terms of the applicable statute without reference to the constitutionality of the statute.
- (2) When money has been paid into the State Treasury in payment of any state taxes, except ad valorem taxes, whether payment was made voluntarily or involuntarily, the appropriate agency shall authorize refunds to the person who paid the tax, or to his heirs, personal representatives or assigns, of any overpayment of tax and any payment where no tax was due. When a bona fide controversy exists between the agency and the taxpayer as to the liability of the taxpayer for the payment of tax claimed to be due by the agency, the taxpayer may pay the amount claimed by the agency to be due, and if an appeal is taken by the taxpayer from the ruling of the agency within the time provided by KRS 131.340 and it is finally adjudged that the taxpayer was not liable for the payment of the tax or any part thereof, the agency shall authorize the refund or credit as the Kentucky Board of Tax Appeals or courts may direct.
- (3) No refund shall be made unless each taxpayer individually files an application or claim for the refund within four (4) years from the date payment was made. Each claim or application for a refund shall be in writing and state the specific grounds upon which it is based. Denials of refund claims or applications may be protested and appealed in accordance with KRS 131.110 and 131.340.
- (4) Refunds shall be authorized with interest as provided in KRS 131.183. The refunds authorized by this section shall be made in the same manner as other claims on the State Treasury are paid. They shall not be charged against any appropriation, but shall be deducted from tax receipts for the current fiscal year.
- (5) Nothing in this section shall be construed to authorize the agency to make or cause to be made any refund except within four (4) years of the date prescribed by law for the filing of a return including any extension of time for filing the return, or the date the money was paid into the State Treasury, whichever is the later, except in any case where the assessment period has been extended by written agreement between the taxpayer and the department, the limitation contained in this subsection shall be extended accordingly. Nothing in this section shall be construed as requiring the agency to authorize any refund to a taxpayer without demand from the taxpayer, if in the opinion of the agency the cost to the state of authorizing the refund would be greater than the amount that should be refunded or credited.
- (6) This section shall not apply to any case in which the statute may be held unconstitutional, either in whole or in part.
- (7) In cases in which a statute has been held unconstitutional, taxes paid thereunder may be refunded to the extent provided by KRS 134.590, and by the statute held unconstitutional.
- (8) No person shall secure a refund of motor fuels tax under KRS 134.580 unless the person holds an unrevoked refund permit issued by the department before the purchase of gasoline or special fuels and that permit entitles the person to apply for a refund under KRS 138.344 to 138.355.
- (9) *Notwithstanding any provision of the KRS to the contrary:*
 - (a) *The Commonwealth hereby revokes and withdraws its consent to suit in any forum whatsoever on any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return. No such claim shall be effective or recognized for any purpose.*

- (b) *Any stated or implied consent for the Commonwealth of Kentucky, or any agent or officer of the Commonwealth of Kentucky, to be sued by any person for any legal, equitable, or other relief with respect to any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, is hereby withdrawn.*
- (c) *The provisions of this subsection shall apply retroactively for all taxable years ending before December 31, 1995, and shall apply to all claims for such taxable years pending in any judicial or administrative forum.*
- (10) *Notwithstanding any provision of the KRS to the contrary:*
 - (a) *No money shall be drawn from the State Treasury for the payment of any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return.*
 - (b) *No provision of the Kentucky Revised Statutes shall constitute an appropriation or mandated appropriation for the payment of any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return.*

Section 2. Whereas recent judicial decisions and refund suits based on combined returns or consolidated returns described in subsections (9) and (10) of Section 1 of this Act could result in catastrophic losses of public revenues desperately needed to fund education, social services, and public improvements projects and initiatives for the benefit of the Commonwealth and all its citizens; and, whereas the immunity of the Commonwealth as the sovereign from suit without the consent of the General Assembly is absolute and unqualified; and, whereas no money shall be drawn from the State Treasury, except in pursuance of appropriations made by law, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or its otherwise becoming a law.

Approved March 19, 2007.

CHAPTER 23

(HB 144)

AN ACT relating to motor vehicle registration.

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

Section 1. KRS 186.162 is amended to read as follows:

- (1) As used in this section and in KRS 186.043, 186.164, 186.166, and 186.174:
 - (a) "Special license plate" means a unique license plate issued under this chapter to a group or organization that readily identifies the operator of the motor vehicle or motorcycle bearing the plate as a member of a group or organization, or a supporter of the work, goals, or mission of a group or organization. The term shall not include regular license plates issued under KRS 186.240;
 - (b) "Street rod" means a modernized private passenger motor vehicle manufactured prior to the year 1949, or designed or manufactured to resemble a vehicle manufactured prior to 1949;
 - (c) "SF" means the portion of an initial or renewal fee to obtain a special license plate that is dedicated for use by the Transportation Cabinet;
 - (d) "CF" means the portion of an initial or renewal fee to obtain a special license plate that is dedicated for use by a county clerk; and
 - (e) "EF" means the portion of an initial or renewal fee to obtain a special license plate that is mandated by this chapter to be dedicated for use by a particular group or organization.

- (2) The initial purchase fee and renewal fee for a special license plate created under this chapter shall be as established in this subsection and includes the name of group or organization and the total initial and renewal fee required for the plate. The amount in parentheses indicates how the total fee is required to be divided:
- (a) Disabled veterans who receive assistance to purchase a vehicle from the United States Veterans' Administration and recipients of the Congressional Medal of Honor:
 - 1. Initial Fee: \$0 (\$0 SF/\$0 CF/\$0 EF).
 - 2. Renewal Fee:\$0 (\$0 SF/\$0 CF/\$0 EF).
 - (b) Former prisoners of war and survivors of Pearl Harbor:
 - 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - 2. Renewal Fee:\$3 (\$0 SF/\$3 CF/\$0 EF).
 - (c) Members of the Kentucky National Guard:
 - 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - 2. Renewal Fee:\$8 (\$0 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - (d) Recipients of the Purple Heart; members of the Civil Air Patrol; active, retired, veteran, reserve, or auxiliary members of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; Merchant Marines who served between December 7, 1941, and August 15, 1945; and disabled veterans who have been declared to be at least ~~fifty~~~~seventy~~ percent (50%)(~~70%~~) service-connected disabled by the United States Department of Veterans' Affairs, or who receive total service-connected disability rating for compensation on individual unemployability and have not received assistance from the United States Department of Veterans' Affairs toward the purchase of a motor vehicle:
 - 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - (e) Recipients of the Distinguished Service Cross, Navy Cross, or Air Force Cross:
 - 1. Initial Fee: \$3 (\$0 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$3 (\$0 SF/\$3 CF/\$0 EF).
 - (f) Disabled license plates:
 - 1. Initial Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
 - (g) Historic vehicles:
 - 1. Initial Fee for two plates: \$53 (\$50 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee: Do not renew annually.
 - (h) Members of Congress:
 - 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - (i) Volunteer firefighters:
 - 1. Initial Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
 - (j) Emergency management:

1. Initial Fee: \$28 (\$25 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (k) Fraternal Order of Police:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (l) Law Enforcement Memorial:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
- (m) Personalized plates:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$40 (\$37 SF/\$3 CF/\$0 EF).
- (n) Street rods:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (o) Nature plates:
1. Initial Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).
- (p) Amateur radio:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (q) Kentucky General Assembly:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (r) Kentucky Court of Justice:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$8 (\$0 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (s) Masons:
1. Initial Fee: \$28 (\$25 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (t) Collegiate plates:
1. Initial Fee: \$50 (\$37 SF/\$3 CF/\$10 EF to the general scholarship fund of the university whose name will be borne on the plate).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the general scholarship fund of the university whose name will be borne on the plate).

- (u) Independent Colleges:
 - 1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Association of Independent Kentucky Colleges and Universities for distribution to the general scholarship funds of the Association's members).
 - 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the Association of Independent Kentucky Colleges and Universities for distribution to the general scholarship funds of the Association's members).
- (v) Child Victims:
 - 1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the child victims' trust fund established under KRS 41.400).
 - 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the child victims' trust fund established under KRS 41.400).
- (w) Kentucky Horse Council:
 - 1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Kentucky Horse Council).
 - 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the Kentucky Horse Council).
- (x) Ducks Unlimited:
 - 1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to Kentucky Ducks Unlimited).
 - 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Ducks Unlimited).
- (y) Spay neuter:
 - 1. Initial Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to the animal control and care fund established under KRS 258.119).
 - 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the animal control and care fund established under KRS 258.119).
- (z) Gold Star Mothers:
 - 1. Initial Fee: \$15 (\$12 SF/\$3 CF/ \$0 EF).
 - 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/ \$0 EF).
- (3) Any special license plate may be combined with a personalized license plate for a twenty-five dollar (\$25) state fee in addition to all other fees for the particular special license plate established in this section and in KRS 186.164(3). The twenty-five dollar (\$25) fee required under this subsection shall be divided between the cabinet and the county clerk of the county where the applicant is applying for the license plate with the cabinet receiving twenty dollars (\$20) and the county clerk receiving five dollars (\$5).
- (4) Owners and lessees of motorcycles registered under KRS 186.050(2) may be eligible to receive special license plates issued under this section or established under the provisions of KRS 186.164 after the cabinet has received three hundred (300) applications and initial state fees from the sponsoring organization. Applicants for a special license plate for a motorcycle shall be required to pay the fee for a special plate as prescribed in this section or in KRS 186.164. The fee paid for the special plate for a motorcycle shall be in lieu of the registration fee required under KRS 186.050(2).

Approved March 21, 2007.

CHAPTER 24

(SB 79)

AN ACT relating to reorganization.

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

Section 1. KRS 194A.030 is amended to read as follows:

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

- (1) Office of the Secretary. Within the Office of the Secretary, there shall be an Office of Legislative and Public Affairs, an Office of Legal Services, *and* an Office of Inspector General~~, and the Governor's Office of Wellness and Physical Activity~~.
 - (a) The Office of Legislative and Public Affairs shall be responsible for the development and implementation of the major legislative and policy initiatives of the cabinet, and shall include oversight of administrative hearings, legislative affairs, and communications with internal and external audiences of the cabinet. The Office of Legislative and Public Affairs shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.
 - (b) The Office of Legal Services shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of Legal Services shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney, giving legal advice and opinions concerning the operation of all programs in the cabinet. The Office of Legal Services shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105.
 - (c) The Office of Inspector General shall be responsible for:
 1. The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the cabinet into matters related to the cabinet or its programs;
 2. Licensing and regulatory functions as the secretary may delegate;
 3. Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of KRS 311.165 to 311.235, 311.241, 311.243, 311.245, and 311.247; and
 4. The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.

The Office of Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary~~;~~
 - ~~(d) The Governor's Office of Wellness and Physical Activity shall be responsible for establishing and implementing a health, wellness, and fitness program for Kentucky and to promote a healthy lifestyle for all citizens of the Commonwealth as defined in KRS 194A.085;~~
- (2) Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for Medicaid services, who shall be appointed by the secretary with the approval of the Governor under with KRS 12.050. The commissioner for Medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for Medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (3) Department for Public Health. The Department for Public Health shall develop and operate all programs of the cabinet that provide health services and all programs for assessing the health status of the population for the promotion of health and the prevention of disease, injury, disability, and premature death. ***This shall include, but not be limited to, oversight of the Division of Women's Physical and Mental Health.*** The Department for Public Health shall be headed by a commissioner for public health who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for public health shall be a duly licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary

to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for public health shall exercise authority over the Department for Public Health under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;

- (4) Department for Mental Health and Mental Retardation Services. The Department for Mental Health and Mental Retardation Services shall develop and administer programs for the prevention of mental illness, mental retardation, brain injury, developmental disabilities, and substance abuse disorders and shall develop and administer an array of services and support for the treatment, habilitation, and rehabilitation of persons who have a mental illness or emotional disability, or who have mental retardation, brain injury, developmental disability, or a substance abuse disorder. The Department for Mental Health and Mental Retardation Services shall be headed by a commissioner for mental health and mental retardation who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for mental health and mental retardation shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for mental health and mental retardation shall exercise authority over the department under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (5) Commission for Children with Special Health Care Needs. The duties, responsibilities, and authority set out in KRS 200.460 to 200.490 shall be performed by the commission. The commission shall advocate the rights of children with disabilities and, to the extent that funds are available, shall provide the services and facilities for children with disabilities as are deemed appropriate by the commission. The commission shall be composed of seven (7) members appointed by the Governor to serve a term of office of four (4) years. The commission may promulgate administrative regulations under KRS Chapter 13A as may be necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the Commission for Children with Special Health Care Needs shall be performed through the office of the executive director of the commission. The executive director shall be appointed by the Governor under KRS 12.040, and the commission may at any time recommend the removal of the executive director upon filing with the Governor a full written statement of its reasons for removal. The executive director shall report directly to the Commission for Children with Special Health Care Needs and serve as the commission's secretary;
- (6) Office of Health Policy. The Office of Health Policy shall lead efforts to coordinate health care policy, including Medicaid, mental health and mental retardation services, public health, certificate of need, health insurance, and the state employee health insurance program. The duties, responsibilities, and authority pertaining to the certificate of need functions and the licensure appeal functions, as set out in KRS Chapter 216B, shall be performed by this office. The Office of Health Policy shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor pursuant to KRS 12.050;
- (7) Department for Human Support Services. The Department for Human Support Services shall streamline the various responsibilities associated with the human services programs for which the cabinet is responsible. This shall include, but not be limited to, oversight of the ~~Division of Aging Services, the~~ Division of Child Abuse and Domestic Violence Services, ~~the Division of Women's Physical and Mental Health,~~ the Division of Family Resource and Youth Services Centers, and the Kentucky Commission on Community Volunteerism and Services. The Department for Human Support Services shall be headed by a commissioner for human support services who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for human support services shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for human support services shall exercise authority over the department under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (8) Office of the Ombudsman. The Office of the Ombudsman shall provide professional support in the evaluation of programs, including but not limited to quality improvement and information analysis and reporting, including contract monitoring, program monitoring, and the development of quality service delivery, and a review and resolution of citizen complaints about programs or services of the cabinet when those complaints are unable to be resolved through normal administrative remedies. The Office of the Ombudsman shall place an emphasis on research and best practice and program accountability and shall monitor federal compliance. The Office of the Ombudsman shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050;
- (9) Office of Technology. The Office of Technology shall develop and maintain technology, technology infrastructure, and information management systems in support of all units of the cabinet. The Office of

Technology shall be headed by a chief information officer who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The chief information officer shall exercise authority over the Office of Technology under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;

- (10) Office of Human Resource Management. The Office of Human Resource Management shall coordinate, oversee, and execute all personnel, training, and management functions of the cabinet. The office shall focus on the oversight, development, and implementation of quality personnel services; curriculum development and delivery of instruction to staff; the administration, management, and oversight of training operations; health, safety, and compliance training; and equal employment opportunity compliance functions. The office shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;
- (11) Office of Fiscal Services. The Office of Fiscal Services shall coordinate, oversee, and execute the accounting, treasury, and financial reporting functions of the cabinet. The office shall be headed by a chief financial officer appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;
- (12) Office of Contract Oversight. The Office of Contract Oversight shall coordinate, oversee, and execute the contracting and procurement processes of the cabinet and shall maintain these processes in compliance with all applicable laws, rules, regulations, and procedures. The office shall ensure that the cabinet executes its contracting and procurement processes within the highest ethical standards and with the utmost integrity. The office shall oversee existing contracts to assure that the cabinet receives those services for which it has contracted or receives funds in payment for services that it has provided by contract, and shall have responsibility for determining that the cabinet maximizes the value of dollars spent by the cabinet for commodities and services. The office shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;
- (13) Department for Community Based Services. The Department for Community Based Services shall administer and be responsible for child and adult protection, foster care and adoption, permanency, and services to enhance family self-sufficiency, including child care, social services, public assistance, and family and child support. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050; and
- (14) Department for Disability Determination Services. The Department for Disability Determination Services shall serve as the state unit as required by Title II and Title XVI of the Social Security Act, and shall have responsibility for determining eligibility for disability for those citizens of the Commonwealth who file applications for disability with the Social Security Administration. The department shall also make determinations for citizens of the Commonwealth who make application for the Kentucky Transitional Assistance Program and determine medical exemptions for participants in the Kentucky Works Program. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050.
- (15) ***Department for Aging and Independent Living. The Department for Aging and Independent Living shall serve as the state unit as designated by the Administration on Aging Services under the Older Americans Act and shall have responsibility for administration of the federal community support services, in-home services, meals, family and caregiver support services, elder rights and legal assistance, senior community services employment program, the state health insurance assistance program, state home and community based services including home care, Alzheimer's respite services and the personal care attendant program, certifications of adult day care and assisted living facilities, the state Council on Alzheimer's Disease and other related disorders, and the Institute on Aging. The department shall also administer the Long Term Care Ombudsman program and the Medicaid Home and Community Based waivers Consumer Directed Option (CDO) program. The department shall serve as the information and assistance center for aging and disability services and administer multiple federal grants and other state initiatives. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050.***
- (16) ***The Governor's Office of Wellness and Physical Activity shall be responsible for establishing and implementing a health, wellness, and fitness program for Kentucky and to promote a healthy lifestyle for all citizens of the Commonwealth as defined in KRS 194A.085.***

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

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

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

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

II. Program cabinets headed by appointed officers:

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

- (c) Office of Communication.
- (d) Office of Legislative and Intergovernmental Affairs.
- (e) Office of Budget and Administration.
 - 1. Division of Human Resources.
 - 2. Division of Administrative Services.
 - 3. Division of Technology Services.
- (f) Board of Directors for the Center for School Safety.
- (g) Council on Postsecondary Education.
 - 1. Foundation for Adult Education.
- (h) Department of Education.
 - 1. Kentucky Board of Education.
- (i) Department for Libraries and Archives.
- (j) Department of Workforce Investment.
 - 1. Office for the Blind.
 - 2. Office of Vocational Rehabilitation.
 - 3. Office of Career and Technical Education.
 - 4. Office of Employment and Training.
- (k) Foundation for Workforce Development.
- (l) Kentucky Office for the Blind State Rehabilitation Council.
- (m) Kentucky Technical Education Personnel Board.
- (n) Kentucky Workforce Investment Board.
- (o) Statewide Council for Vocational Rehabilitation.
- (p) Statewide Independent Living Council.
- (q) Unemployment Insurance Commission.
- (r) Education Professional Standards Board.
 - 1. Division of Educator Preparation.
 - 2. Division of Certification.
 - 3. Division of Professional Learning and Assessment.
 - 4. Division of Legal Services.
- (s) Kentucky Commission on the Deaf and Hard of Hearing.
- (t) Kentucky Educational Television.
- (u) Kentucky Environmental Education Council.
- 3. Environmental and Public Protection Cabinet:
 - (a) Office of the Secretary.
 - 1. Office of Legislative and Intergovernmental Affairs.
 - 2. Office of Communications and Public Outreach.
 - 3. Office of Regulatory Affairs.
 - 4. Office of Legal Services.

5. Office of Administrative and Information Services.
 6. Office of Administrative Hearings.
 7. Office of Inspector General.
 8. Mine Safety Review Commission.
 9. Workers' Compensation Board.
 10. Kentucky State Nature Preserves Commission.
 11. Kentucky Environmental Quality Commission.
 12. Kentucky Occupational Safety and Health Review Commission.
- (b) Department for Environmental Protection.
1. Office of the Commissioner.
 2. Division of Air Quality.
 3. Division of Water.
 4. Division of Environmental Services.
 5. Division of Waste Management.
 6. Division of Enforcement.
 7. Division of Compliance Assistance.
- (c) Department for Natural Resources.
1. Office of the Commissioner.
 2. Office of Technical and Administrative Support.
 3. Division of Mine Permits.
 4. Division of Mine Reclamation and Enforcement.
 5. Division of Abandoned Mine Lands.
 6. Division of Oil and Gas Conservation.
 7. Office of Mine Safety and Licensing.
 8. Division of Forestry.
 9. Division of Conservation.
- (d) Department of Public Protection.
1. Office of the Commissioner.
 2. Division of Administrative Services.
 3. Crime Victims Compensation Board.
 4. Board of Claims.
 5. Board of Tax Appeals.
 6. Kentucky Boxing and Wrestling Authority.
 7. Kentucky Horse Racing Authority.
 8. Kentucky Public Service Commission.
 9. Office of Alcoholic Beverage Control.
 10. Office of Charitable Gaming.
 11. Office of Financial Institutions.

12. Office of Housing, Buildings and Construction.
13. Office of Insurance.
- (e) Department of Labor.
 1. Office of the Commissioner.
 2. Office of Occupational Safety and Health.
 3. Office of Labor Management Relations and Mediation.
 4. Office of Workplace Standards.
 5. Office of Workers' Claims.
 6. Workers' Compensation Funding Commission.
 7. Kentucky Labor Management Advisory Council.
 8. Occupational Safety and Health Standards Board.
 9. Prevailing Wage Review Board.
 10. Kentucky Employees Insurance Association.
 11. Apprenticeship and Training Council.
 12. State Labor Relations Board.
 13. Workers' Compensation Advisory Council.
 14. Workers' Compensation Nominating Commission.
 15. Employers' Mutual Insurance Authority.
 16. Division of Administrative Services.
4. Transportation Cabinet:
 - (a) Department of Highways.
 1. Office of Program Planning and Management.
 2. Office of Project Development.
 3. Office of Construction and Operations.
 4. Office of Intermodal Programs.
 5. Highway District Offices One through Twelve.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Aviation.
 - (e) Department of Intergovernmental Programs.
 1. Office of Transportation Enhancement Programs.
 2. Office of Rural and Secondary Roads.
 - (f) Office of the Secretary.
 1. Office of Legislative and Intergovernmental Affairs.
 2. Office of Public Affairs.
 3. Office of Transportation Delivery.
 4. Office for Business and Occupational Development.
 5. Office of Budget and Fiscal Management.

- 6. Office of Legal Services.
- 7. Office of Inspector General.
- 8. Office of the Transportation Operations Center.
- 9. Office of Personnel Management.
- 5. Cabinet for Economic Development:
 - (a) Office of Administration and Support.
 - (b) Department for New Business Development.
 - (c) Department of Financial Incentives.
 - (d) Department for Existing Business Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
 - (g) Office of Research and Information Technology.
 - (h) Department of Commercialization and Innovation.
 - (i) Office of Legal Services.
 - (j) Commission on Small Business Advocacy.
- 6. Cabinet for Health and Family Services:
 - (a) Department for Public Health.
 - (b) Department for Medicaid Services.
 - (c) Department for Mental Health and Mental Retardation Services.
 - (d) Kentucky Commission for Children with Special Health Care Needs.
 - (e) Office of Health Policy.
 - (f) Office of the Secretary.
 - (g) Office of Legal Services.
 - (h) Office of Inspector General.
 - (i) Office of Legislative and Public Affairs.
 - (j) Department for Community Based Services.
 - (k) Department for Disability Determination Services.
 - (l) Office of the Ombudsman.
 - (m) Department for Human Support Services.
 - (n) Kentucky Commission on Community Volunteerism and Service.
 - (o) Office of Fiscal Services.
 - (p) Office of Human Resource Management.
 - (q) Office of Technology.
 - (r) Office of Contract Oversight.
 - (s) Governor's Office of Wellness and Physical Activity.
 - (t) ***Department for Aging and Independent Living.***
- 7. Finance and Administration Cabinet:
 - (a) Office of General Counsel.

- (b) Office of the Controller.
 - (c) Office of Administrative Services.
 - (d) Office of Public Information.
 - (e) Department for Facilities and Support Services.
 - (f) Department of Revenue.
 - (g) Commonwealth Office of Technology.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Savings Bond Authority.
 - (j) Office of Equal Employment Opportunity and Contract Compliance.
 - (k) County Officials Compensation Board.
 - (l) Kentucky Employees Retirement Systems.
 - (m) Commonwealth Credit Union.
 - (n) State Investment Commission.
 - (o) Kentucky Housing Corporation.
 - (p) Kentucky Local Correctional Facilities Construction Authority.
 - (q) Kentucky Turnpike Authority.
 - (r) Historic Properties Advisory Commission.
 - (s) Kentucky Tobacco Settlement Trust Corporation.
 - (t) State Board for Proprietary Education.
 - (u) Kentucky Higher Education Assistance Authority.
 - (v) Kentucky River Authority.
 - (w) Kentucky Teachers' Retirement System Board of Trustees.
8. Commerce Cabinet:
- (a) Department of Tourism.
 - (1) Division of Tourism Services.
 - (2) Division of Marketing and Advertising.
 - (3) Division of Parks Marketing.
 - (b) Kentucky Department of Parks.
 - (1) Division of Information Technology.
 - (2) Division of Personnel and Payroll.
 - (3) Division of Financial Operations.
 - (4) Division of Facilities Management.
 - (5) Division of Project Administration.
 - (6) Division of Customer Services.
 - (7) Division of Recreation.
 - (8) Division of Golf Courses.
 - (9) Division of Food Services.
 - (10) Division of Rangers.

- (11) Division of Eastern Parks.
- (12) Division of Southern Parks.
- (13) Division of Western Parks.
- (c) Department of Fish and Wildlife Resources.
 - (1) Division of Law Enforcement.
 - (2) Division of Administrative Services.
 - (3) Division of Engineering.
 - (4) Division of Fisheries.
 - (5) Division of Information and Education.
 - (6) Division of Wildlife.
 - (7) Division of Public Affairs.
- (d) Kentucky Horse Park.
 - (1) Division of Support Services.
 - (2) Division of Buildings and Grounds.
 - (3) Division of Operational Services.
- (e) Kentucky State Fair Board.
 - (1) Division of Expositions and Admission.
 - (2) Division of Kentucky Fair and Exposition Center Operations.
 - (3) Division of Commonwealth Convention Center.
 - (4) Division of Public Relations and Media.
 - (5) Division of Administrative Services.
 - (6) Division of Personnel Management and Staff Development.
 - (7) Division of Sales.
 - (8) Division of Security and Traffic Control.
- (f) Office of the Secretary.
- (g) Office of Finance and Administration.
- (h) Office of Legal Affairs.
- (i) Office of Intergovernmental Affairs.
- (j) Office of Human Resources.
- (k) Office of Public Affairs and Constituent Services.
- (l) Office of Information Technology.
- (m) Office of the Kentucky Sports Authority.
 - (1) Kentucky Sports Authority Board.
- (n) Office of Creative Services.
- (o) Office of Capital Plaza Operations.
- (p) Office of Energy Policy.
 - (1) Energy Policy Advisory Council.
- (q) Office of Arts and Cultural Heritage.

- (r) Kentucky African-American Heritage Commission.
 - (s) Kentucky Foundation for the Arts.
 - (t) Kentucky Humanities Council.
 - (u) Kentucky Heritage Council.
 - (v) Kentucky Arts Council.
 - (w) Kentucky Historical Society.
 - (1) Division of Museums.
 - (2) Division of Oral History and Educational Outreach.
 - (3) Division of Research and Publications.
 - (4) Division of Administration.
 - (x) Kentucky Center for the Arts.
 - (1) Division of Governor's School for the Arts.
 - (y) Kentucky Artisans Center at Berea.
 - (z) Martin Luther King Commission.
 - (aa) Northern Kentucky Convention Center.
 - (ab) Eastern Kentucky Exposition Center.
9. Personnel Cabinet:
- (a) Office of the Secretary.
 - (b) Department for Personnel Administration.
 - (c) Office for Employee Relations.
 - (d) Kentucky Public Employees Deferred Compensation Authority.
 - (e) Office of Administrative Services.
 - (f) Office of Legal Services.
 - (g) Office of Government Training.
 - (h) Department for Employee Insurance.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Department for Local Government.
- 3. Kentucky Commission on Human Rights.
- 4. Kentucky Commission on Women.
- 5. Department of Veterans' Affairs.
- 6. Kentucky Commission on Military Affairs.
- 7. Office of Minority Empowerment.
- 8. Governor's Council on Wellness and Physical Activity.

Section 3. KRS 148.527 is amended to read as follows:

- (1) The Department of Tourism of the Commerce Cabinet shall, after appropriate research has been conducted, establish and maintain a Kentucky Certified Retirement Community Program whereby retirees and those planning to retire are encouraged to make their homes in Kentucky communities that have met certain criteria to be certified by the Commerce Cabinet as a Kentucky certified retirement community. In support of this

program, the Department of Tourism shall identify certain issues of interest to retirees or potential retirees in order to inform them of the benefits of living in Kentucky. Issues of interest to retirees may include, but are not limited to:

- (a) Kentucky's state and local tax structure;
 - (b) Housing opportunities and cost;
 - (c) Climate;
 - (d) Personal safety;
 - (e) Working opportunities;
 - (f) Health care services and other services along the continuum of services including, but not limited to, home and community based services;
 - (g) Transportation;
 - (h) Continuing education;
 - (i) Leisure living;
 - (j) Recreation;
 - (k) The performing arts;
 - (l) Festivals and events;
 - (m) Sports at all levels; and
 - (n) Other services and facilities that are necessary to enable persons to age in the community and in the least restrictive environment.
- (2) The mission of the Kentucky Certified Retirement Community Program shall be to:
- (a) Promote the state as a retirement destination to retirees and those persons and families who are planning retirement both in and outside of Kentucky;
 - (b) Assist Kentucky communities in their efforts to market themselves as retirement locations and to develop communities that retirees would find attractive for a retirement lifestyle;
 - (c) Assist in the development of retirement communities and lifecare communities for economic development purposes and as a means of providing a potential workforce and enriching Kentucky communities; and
 - (d) Encourage tourism to Kentucky in the form of mature market travel to Kentucky in reference to retirement desirability for the future, and for the visitation of those who have chosen to retire in Kentucky.
- (3) The Commerce Cabinet shall coordinate the development and planning of the Kentucky Certified Retirement Community Program with the Cabinet for Economic Development, the ***Department for Aging and Independent Living***~~[Division of Aging Services]~~ in the Cabinet for Health and Family Services, the Kentucky Commission on Military Affairs, the Department of Veterans' Affairs, and other state and local groups interested in participating in and promoting the program.
- (4) To obtain certification as a Kentucky certified retirement community, the following requirements shall be met:
- (a) Official community support. A resolution by the governing authority endorsing the local retirement recruitment effort is required;
 - (b) Designation of a sponsor. The program shall have an official sponsoring organization that shall appoint an individual who will be accountable to the community and to the state;
 - (c) Funding. The sponsoring organization must commit a minimum of ten thousand dollars (\$10,000) per year for the local program;
 - (d) Health services. There shall be a hospital and emergency medical services that are readily accessible to the community;

- (e) Available housing. The community shall maintain information on both resale housing and rental housing to ensure that the quantity is sufficient to meet the needs of potential new retiree residents;
 - (f) Retiree desirability assessment. The community shall conduct a retiree desirability assessment that shall focus on a number of factors including, but not limited to, medical services, adult education opportunities, shopping, recreation, cultural opportunities, safety, aging services, and a continuum of care including home and community based services, housing for the elderly, assisted living, personal care, and nursing care facilities;
 - (g) Establishment of subcommittees. Each locality shall have a general retiree attraction committee and a minimum of four (4) subcommittees as follows:
 - 1. Community inventory/assessment subcommittee. This subcommittee shall conduct an unbiased inventory and assessment of whether the community can offer the basics that retirees demand and develop a professional portfolio containing brief biographies of professionals in the community;
 - 2. Community relations/fundraising subcommittee. This subcommittee shall locate retirees living in the community, act as salespersons for the program, raise funds necessary to run the program, recruit subcommittee members, organize special events, and promote and coordinate the program with local entities;
 - 3. Marketing and promotion subcommittee. This subcommittee shall establish a community image, evaluate target markets, develop and distribute promotional material, and coordinate advertising and public relations campaigns; and
 - 4. Ambassadors subcommittee. This subcommittee shall be the first contact with prospective retirees and provide tour guides when prospects visit the community. The subcommittee shall respond to inquiries, log contacts made, provide tours, invite prospects to special community events, and maintain continual contact with prospects until the time that the prospect makes a retirement location decision;
 - (h) Community profile. The sponsor shall develop a community profile similar to that used by many chambers of commerce. It will include factors such as crime statistics, tax information, recreational opportunities, and housing availability; and
 - (i) Written marketing plan. The retiree attraction committee shall submit a marketing plan that shall detail the mission, the target market, the competition, an analysis of the community's strengths, weaknesses, opportunities and threats, and the strategies the program will employ to attain its goals.
- (5) During the certification process, a representative of the retirement attraction committee shall attend state training meetings.
 - (6) The retiree attraction committee shall work to gain the support of churches, clubs, businesses, and the local media, as this support is necessary for the success of the program.
 - (7) Within ninety (90) days of certification, the locality shall submit a complete retiree attraction package to the Department of Tourism.
 - (8) Before certification is awarded, the retiree attraction committee shall submit a written three (3) year commitment to the program and a long-term plan outlining steps the community will undertake to maintain its desirability as a destination for retirees. The long-range plan shall outline plans to correct any facility and service deficiencies identified in the retiree desirability assessment required by subsection (4)(f) of this section. The written commitment and long-range plan shall be forwarded to the Department of Tourism of the Commerce Cabinet.
 - (9) Upon being certified as a Kentucky certified retirement community, the Commerce Cabinet shall provide the following assistance to the community:
 - (a) Assistance in the training of local staff and volunteers;
 - (b) Ongoing oversight and guidance in marketing, plus updating on national retirement trends;
 - (c) Inclusion in the state's national advertising and public relations campaigns and travel show promotions, including a prominent feature on the cabinet's Internet Web site;

- (d) Eligibility for state financial assistance for brochures, support material, and advertising; and
 - (e) An annual evaluation and progress assessment on maintaining and improving the community's desirability as a home for retirees.
- (10) The Commerce Cabinet shall promulgate administrative regulations to implement the provisions of this section.

Section 4. KRS 194A.085 is amended to read as follows:

- (1) The Governor's Office of Wellness and Physical Activity is hereby established to implement a health, wellness, and fitness program for Kentucky and to promote a healthy lifestyle for all citizens of the Commonwealth. The office shall be headed by an executive director, who shall be appointed by the Governor in accordance with KRS ~~12.040~~~~[11.040]~~ and shall serve at the pleasure of and under the direction of the Governor.
- (2) The office's duties, rights, and responsibilities shall include but not be limited to the following:
 - (a) Create a strategic plan to design Kentucky's wellness efforts;
 - (b) Implement and operate the Governor's Challenge Program;
 - (c) Provide assistance to the Governor's Council on Wellness and Physical Activity in accomplishing its mission and charge;
 - (d) Identify and assess the most common challenges, existing resources, and services within the state and make recommendations to the Governor, state Legislature, or other governing bodies regarding the demand and effectiveness of present services and improvements that should be addressed;
 - (e) Develop, implement, and coordinate all physical activity and wellness related programs for residents of the Commonwealth;
 - (f) Develop a comprehensive statewide strategy that coordinates state and local efforts to promote wellness and physical activity;
 - (g) Coordinate the efforts of the Governor's Council on Wellness and Physical Activity with the efforts of the Education Cabinet, the Cabinet for Health and Family Services, and the Personnel Cabinet;
 - (h) Design information campaigns to raise public awareness and promote citizen engagement regarding the critical nature of wellness in the state and to increase the will to make quality resources and services more widely available; and
 - (i) Promulgate any administrative regulations necessary to carry out the provisions of this chapter.
- (3) The executive director may, at the request of the Governor or any cabinet secretary, serve as a designee on boards, commissions, task forces, or other committees addressing issues relating to wellness and physical activity.
- (4) The Finance and Administration Cabinet, the Governor's Office for Policy and Management, the Education Cabinet, and the Personnel Cabinet shall take all steps necessary to effectuate the provisions of this section.

Section 5. KRS 194A.135 is amended to read as follows:

- (1) The Kentucky Council on Developmental Disabilities is created within the cabinet.
- (2) The Kentucky Council on Developmental Disabilities is established to comply with the requirements of the Developmental Disabilities Act of 1984 and any subsequent amendment to that act.
- (3) The members of the Kentucky Council on Developmental Disabilities shall be appointed by the Governor to serve as advocates for persons with developmental disabilities. The council shall be composed of twenty-six (26) members.
 - (a) Ten (10) members shall be representatives of: the principal state agencies administering funds provided under the Rehabilitation Act of 1973 as amended; the state agency that administers funds provided under the Individuals with Disabilities Education Act (IDEA); the state agency that administers funds provided under the Older Americans Act of 1965 as amended; the single state agency designated by the Governor for administration of Title XIX of the Social Security Act for persons with developmental disabilities; higher education training facilities, each university-affiliated program or satellite center in the Commonwealth; and the protection and advocacy system established under Public Law 101-496. These members shall represent the following:

1. Office of Vocational Rehabilitation;
 2. Office for the Blind;
 3. Division of Exceptional Children, within the Department of Education;
 4. ***Department for Aging and Independent Living***~~[Division of Aging Services];~~
 5. Department for Medicaid Services;
 6. Department of Public Advocacy, Protection and Advocacy Division;
 7. University-affiliated programs;
 8. Local and nongovernmental agencies and private nonprofit groups concerned with services for persons with developmental disabilities;
 9. Department for Mental Health and Mental Retardation Services; and
 10. Department for Public Health, Division of Adult and Child Health Improvement.
- (b) At least sixty percent (60%) of the members of the council shall be composed of persons with developmental disabilities or the parents or guardians of persons, or immediate relatives or guardians of persons with mentally impairing developmental disabilities, who are not managing employees or persons with ownership or controlling interest in any other entity that receives funds or provides services under the Developmental Disabilities Act of 1984 as amended and who are not employees of a state agency that receives funds or provides services under this section. Of these members, five (5) members shall be persons with developmental disabilities, and five (5) members shall be parents or guardians of children with developmental disabilities or immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves. Six (6) members shall be a combination of individuals in these two (2) groups, and at least one (1) of these members shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability or an individual with a developmental disability who resides in an institution or who previously resided in an institution.
- (c) Members not representing principal state agencies shall be appointed for a term of three (3) years. Members shall serve no more than two (2) consecutive three (3) year terms. Members shall serve until their successors are appointed or until they are removed for cause.
- (d) The council shall elect its own chair, adopt bylaws, and operate in accordance with its bylaws. Members of the council who are not state employees shall be reimbursed for necessary and actual expenses. The cabinet shall provide personnel adequate to insure that the council has the capacity to fulfill its responsibilities. The council shall be headed by an executive director. If the executive director position becomes vacant, the council shall be responsible for the recruitment and hiring of a new executive director.
- (4) The Kentucky Council on Developmental Disabilities shall:
- (a) Develop, in consultation with the cabinet, and implement the state plan as required by Part B of the Developmental Disabilities Act of 1984, as amended, with a goal of development of a coordinated consumer and family centered focus and direction, including the specification of priority services required by that plan;
 - (b) Monitor, review, and evaluate, not less often than annually, the implementation and effectiveness of the state plan in meeting the plan's objectives;
 - (c) To the maximum extent feasible, review and comment on all state plans that relate to persons with developmental disabilities;
 - (d) Submit to the secretary of the cabinet, the commissioner of the Department for Mental Health and Mental Retardation Services, and the Secretary of the United States Department of Health and Human Services any periodic reports on its activities as required by the United States Department of Health and Human Services and keep records and afford access as the cabinet finds necessary to verify the reports;

- (e) Serve as an advocate for individuals with developmental disabilities and conduct programs, projects, and activities that promote systematic change and capacity building;
 - (f) Examine, not less than once every five (5) years, the provision of and need for federal and state priority areas to address, on a statewide and comprehensive basis, urgent needs for services, supports, and other assistance for individuals with developmental disabilities and their families; and
 - (g) Prepare, approve, and implement a budget that includes amounts paid to the state under the Developmental Disabilities Act of 1984, as amended, to fund all programs, projects, and activities under that Act.
- (5) The Kentucky Council on Developmental Disabilities shall appoint a subcommittee, which shall include members of the Kentucky Commission on Autism Spectrum Disorders, to monitor the implementation of the state plan as developed by the commission beginning October 1, 2006. The subcommittee shall prepare, and the council shall submit, the report as required under *subsection (10) of Section 6 of this Act*—~~KRS 194A.622(10)}~~.

Section 6. KRS 194A.622 is amended to read as follows:

- (1) There is hereby created the Kentucky Commission on Autism Spectrum Disorders, which shall consist of the following twenty-two (22) members who shall be initially appointed by July 1, 2005:
- (a) The secretary of the Cabinet for Health and Family Services or his or her designee;
 - (b) The commissioner of the Department for Medicaid Services or his or her designee;
 - (c) The director of the Kentucky Early Intervention System, Department for Public Health, or his or her designee;
 - (d) The commissioner of the Department for Mental Health and Mental Retardation Services or his or her designee;
 - (e) The ~~commissioner~~~~director~~ of the *Department for Aging and Independent Living*~~Division of Aging Services~~ or his or her designee;
 - (f) The chair of the Council on Postsecondary Education or his or her designee;
 - (g) The director of the Division of Exceptional Children Services or his or her designee;
 - (h) The commissioner of the Department of Vocational Rehabilitation or his or her designee;
 - (i) The executive director of the Office of Insurance or his or her designee;
 - (j) Two (2) nonvoting ex officio members from the House of Representatives, one (1) representing the majority party and one (1) representing the minority party, who shall be appointed by and serve at the pleasure of the Speaker of the House;
 - (k) Two (2) nonvoting ex officio members from the Senate, one (1) representing the majority party and one (1) representing the minority party, who shall be appointed by and serve at the pleasure of the President of the Senate;
 - (l) Four (4) professional ASD treatment providers, including at least one (1) mental health provider, one (1) physical health provider, and one (1) complex needs consultant from a special education cooperative, to be appointed by the Governor; and
 - (m) Five (5) parents, including three (3) who, at the time of their appointment to the commission, have a child with an ASD who is under eighteen (18) years of age and two (2) who, at the time of their appointment to the commission, have a child with an ASD who is eighteen (18) years of age or older, to be appointed by the Governor.
- (2) In making appointments to the commission, the Governor shall ensure broad representation of Kentucky's citizens who are concerned with the health and quality of life of individuals with an ASD, may appoint individuals who are also members of the Kentucky Council on Developmental Disabilities, and shall consider candidates recommended by the Autism Spectrum Disorders Advisory Consortium of Kentucky.
- (3) Members shall serve without compensation but shall be reimbursed for their actual expenses incurred in the performance of commission duties in accordance with KRS 45.101 and administrative regulations promulgated

thereunder. Members of the commission shall serve until the commission ceases to exist, a successor has been appointed, or until removed for good cause.

- (4) The Cabinet for Health and Family Services shall provide staff and administrative support for the commission.
- (5) The chair of the commission shall be designated by the Governor and may be a member in addition to those listed in subsection (1) of this section. The chair of the commission shall establish procedures for the commission's internal procedures.
- (6) The commission shall meet at least three (3) times per year. The commission shall also meet as often as necessary to accomplish its purpose upon the call of the chair, the request of four (4) or more members, or the request of the Governor.
- (7) The commission shall develop a comprehensive state plan for creating an integrated system of training, treatments, and services for individuals of all ages with an ASD. The commission shall utilize relevant data and research and consult with appropriate professionals, agencies, institutions, and organizations representing the private and public sectors, including the Kentucky Autism Training Center, to develop the state plan. The state plan shall include the following:
 - (a) An assessment of the diverse needs for services and supports for individuals with an ASD;
 - (b) Identification of state, federal, private, and any other appropriate funding sources;
 - (c) Development of a comprehensive training plan, which shall include the Kentucky Autism Training Center, to meet training needs;
 - (d) An analysis of standards for provider training and qualifications, best practice standards for services, and the need for additional service providers;
 - (e) An evaluation of health benefit plans and insurance coverage for the treatment of ASD;
 - (f) A plan for the identification of individuals of all ages with an ASD and for the creation of a statewide ASD registry;
 - (g) An analysis of program and service eligibility criteria;
 - (h) An assessment of the need for coordinated, enhanced, and targeted special education and treatment programs for children with an ASD; and
 - (i) A timeline for implementing and monitoring the recommendations of the plan statewide. The timeline shall include input from the following:
 1. The Cabinet for Health and Family Services;
 2. The Department for Medicaid Services;
 3. The Department for Public Health;
 4. The Department for Mental Health and Mental Retardation Services;
 5. The Kentucky Early Intervention System;
 6. The Division of Exceptional Children Services;
 7. The Department of Vocational Rehabilitation;
 8. The Office of Insurance;
 9. The Department of Education;
 10. The Council on Postsecondary Education; and
 11. Other appropriate agencies, professionals, institutions, and organizations representing the public and private sectors, including the Kentucky Autism Training Center.
- (8) Based upon the comprehensive state plan for an integrated system of training, treatment, and services for individuals of all ages with an ASD, the commission shall make recommendations regarding legislation, administrative regulations, and policies to the Governor and the General Assembly on the following:

- (a) Needs for services and supports for individuals who have an ASD;
 - (b) Funding needs and sources, including state, federal, private, and any other appropriate funding sources;
 - (c) Training needs and a plan to implement a comprehensive training system, which shall include the Kentucky Autism Training Center;
 - (d) Standards for provider training and qualifications, best practice standards for services, and the need for additional providers;
 - (e) Goals for developing health benefit plans that provide insurance coverage for the treatment of ASD;
 - (f) A plan for the identification of individuals of all ages with an ASD and for the creation of a statewide ASD registry;
 - (g) Consistent program and service eligibility criteria;
 - (h) The need for coordinated, enhanced, and targeted special education and treatment programs for individuals with an ASD; and
 - (i) Strategies and timelines for establishing an accountable, cost-efficient, and cooperative system of services that integrates and builds upon existing public and private agencies, programs, and resources.
- (9) The commission shall submit the comprehensive state plan and recommendations to the Governor, the Kentucky Council on Developmental Disabilities, and the Legislative Research Commission by October 1, 2006, at which time the commission shall cease to exist unless reauthorized by the General Assembly.
- (10) The Kentucky Council on Developmental Disabilities shall appoint a subcommittee, which shall include members of the commission, to monitor the implementation of the state plan as developed by the commission beginning October 1, 2006. The subcommittee shall prepare, and the council shall submit, a report to the Governor and Legislative Research Commission that assesses progress in the implementation of the state plan and that makes recommendations on the need for modifications to the state plan as developed by the Kentucky Commission on Autism Spectrum Disorders. The subcommittee shall prepare, and the council shall submit, the report as it deems appropriate, but no less than biennially, until October 1, 2015.

Section 7. KRS 194A.700 is amended to read as follows:

As used in KRS 194A.700 to 194A.729:

- (1) "Activities of daily living" means normal daily activities, including bathing, dressing, grooming, transferring, toileting, and eating;
- (2) "Assistance with self-administration of medication" means:
 - (a) Reminding the client to take medications;
 - (b) Reading the medication's label;
 - (c) Confirming that medication is being taken by the client for whom it is prescribed;
 - (d) Opening the dosage packaging or medication container, but not removing or handling the actual medication;
 - (e) Storing the medication in a manner that is accessible to the client; and
 - (f) Making available the means of communicating with the client's physician and pharmacy for prescriptions by telephone, facsimile, or other electronic device;
- (3) "Assisted-living community" means a series of living units on the same site, operated as one (1) business entity, and certified under **Section 9 of this Act** [KRS 194A.707] to provide services for five (5) or more adult persons not related within the third degree of consanguinity to the owner or manager;
- (4) "Client" means an adult person who has entered into a lease agreement with an assisted-living community;
- (5) "Danger" means physical harm or threat of physical harm to one's self or others;
- (6) "Health services" has the same meaning as in KRS 216B.015;
- (7) "Instrumental activities of daily living" means activities to support independent living including, but not limited to, housekeeping, shopping, laundry, chores, transportation, and clerical assistance;

- (8) "Living unit" means a portion of an assisted-living community occupied as the living quarters of a client under a lease agreement;
- (9) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place with the use of a device including, but not limited to, a walker, crutches, or wheelchair; and
- (10) "~~Department~~~~[Division]~~" means the *Department for Aging and Independent Living*~~[Division of Aging Services]~~.

Section 8. KRS 194A.705 is amended to read as follows:

- (1) The assisted-living community shall provide each client with the following services according to the lease agreement:
 - (a) Assistance with activities of daily living and instrumental activities of daily living;
 - (b) Three (3) meals and snacks made available each day;
 - (c) Scheduled daily social activities that address the general preferences of clients; and
 - (d) Assistance with self-administration of medication.
- (2) Clients of an assisted-living community may arrange for additional services under direct contract or arrangement with an outside agent, professional, provider, or other individual designated by the client if permitted by the policies of the assisted-living community.
- (3) Upon entering into a lease agreement, an assisted-living community shall inform the client in writing about policies relating to the contracting or arranging for additional services.
- (4) Each assisted-living community shall assist each client upon a move-out notice to find appropriate living arrangements. Each assisted-living community shall share information provided from the ~~department~~~~[division]~~ regarding options for alternative living arrangements at the time a move-out notice is given to the client.

Section 9. KRS 194A.707 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall establish by the promulgation of administrative regulation under KRS Chapter 13A, an initial and annual certification review process for assisted-living communities that shall include an on-site visit. This administrative regulation shall establish procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B.
- (2) No assisted-living community shall operate unless its owner or manager has:
 - (a) Filed a current application for the assisted-living community to be certified by the ~~department~~~~[division]~~; or
 - (b) Received certification of the assisted-living community from the ~~department~~~~[division]~~.
- (3) No business shall market its services as an assisted-living community unless its owner or manager has:
 - (a) Filed a current application for the assisted-living community to be certified by the ~~department~~~~[division]~~; or
 - (b) Received certification of the assisted-living community from the ~~department~~~~[division]~~.
- (4) The ~~department~~~~[division]~~ shall determine the feasibility of recognizing accreditation by other organizations in lieu of certification from the ~~department~~~~[division]~~.
- (5) Individuals designated by the ~~department~~~~[division]~~ to conduct certification reviews shall have the skills, training, experience, and ongoing education to perform certification reviews.
- (6) Upon conducting a certification review, the ~~department~~~~[division]~~ shall assess an assisted-living community certification fee in the amount of twenty dollars (\$20) per living unit that in the aggregate for each assisted-living community is no less than three hundred dollars (\$300) and no more than one thousand six hundred dollars (\$1,600). The ~~department~~~~[division]~~ shall submit to the Legislative Research Commission, by June 30 of each year, a breakdown of fees assessed and costs incurred for conducting certification reviews.

- (7) Notwithstanding any provision of law to the contrary, the ~~department~~~~[division]~~ may request any additional information from an assisted-living community or conduct additional on-site visits to ensure compliance with the provisions of KRS 194A.700 to 194A.729.

Section 10. KRS 194A.709 is amended to read as follows:

- (1) The ~~department~~~~[division]~~ shall report to the Division of Health Care Facilities and Services any alleged or actual cases of health services being delivered by the staff of an assisted-living community.
- (2) An assisted-living community shall have written policies on reporting and recordkeeping of alleged or actual cases of abuse, neglect, or exploitation of an adult under KRS 209.030.
- (3) Any assisted-living community staff member who has reasonable cause to suspect that a client has suffered abuse, neglect, or exploitation shall report the abuse, neglect, or exploitation under KRS 209.030.

Section 11. KRS 194A.715 is amended to read as follows:

- (1) An assisted-living community shall provide any interested person with a:
 - (a) Consumer publication, as approved by the ~~department~~~~[division]~~, that contains a thorough description of Kentucky laws and regulations governing assisted-living communities;
 - (b) Standard consumer checklist provided by the ~~department~~~~[division]~~; and
 - (c) Description of any special programming, staffing, or training if the assisted-living community markets itself as providing special programming, staffing, or training on behalf of clients with particular needs or conditions.
- (2) An assisted-living community may refer a request for information required in subsection (1)(a) of this section to the ~~department~~~~[division]~~.

Section 12. KRS 194A.723 is amended to read as follows:

- (1) Any assisted-living community that provides services without filing a current application with the ~~department~~~~[division]~~ or receiving certification by the ~~department~~~~[division]~~ may be fined up to five hundred dollars (\$500) per day.
- (2) Any business that markets its services as an assisted-living community without filing a current application with the ~~department~~~~[division]~~ or receiving certification by the ~~department~~~~[division]~~ may be fined up to five hundred dollars (\$500) per day.

Section 13. KRS 194A.729 is amended to read as follows:

If a person or business seeks financing for an assisted-living community project, the ~~department~~~~[division]~~ shall provide written correspondence to the lender, upon request, to denote whether the architectural drawings and lease agreement conditionally comply with the provisions of KRS 194A.700 to 194A.729. The ~~department~~~~[division]~~ may charge a fee of no more than two hundred fifty dollars (\$250) for the written correspondence to the lender.

Section 14. KRS 205.179 is amended to read as follows:

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

Section 15. KRS 205.470 is amended to read as follows:

- (1) As used in this section, "aging caregiver" means an individual age sixty (60) or older who provides care for an individual with mental retardation or other developmental disability.
- (2) If state, federal, or other funds are available, the Kentucky Department for Mental Health and Mental Retardation Services shall, in cooperation with the **Department for Aging and Independent Living**~~[Division of Aging Services]~~ and the Department for Medicaid Services, establish a centralized resource and referral center designed as a one-stop, seamless system to provide aging caregivers with information and assistance with choices and planning for long-term supports for individuals with mental retardation or developmental disability.

- (3) The center created in subsection (2) of this section shall provide but not be limited to the following services:
- (a) Comprehensive information on available programs and services, including but not limited to:
 - 1. Residential services;
 - 2. Employment training;
 - 3. Supported employment;
 - 4. Behavioral support;
 - 5. Respite services;
 - 6. Adult day health or adult day social services;
 - 7. Support coordination;
 - 8. Home or environmental modifications;
 - 9. Community living services, including an attendant, and assistance with homemaking, shopping, and personal care;
 - 10. Support groups in the community;
 - 11. Psychiatric services;
 - 12. Consumer-directed options;
 - 13. Attorneys or legal services to assist with will preparation; and
 - 14. The impact of inheritance on government benefits and options, including establishing a special needs trust;
 - (b) Printed material and Internet-based information related to:
 - 1. Options for future planning;
 - 2. Financial and estate planning;
 - 3. Wills and trusts; and
 - 4. Advance directives and funeral and burial arrangements; and
 - (c) Referral to community resources.
- (4) The center created in subsection (2) of this section shall operate a toll-free number at least during regular business hours and shall publish information required in paragraph (a) of subsection (3) of this section and a description of services provided by the center on a cabinet Web site.
- (5) The center created in subsection (2) of this section shall make the information listed in subsection (3) of this section available to the support broker and any representative of an individual who is participating in a Medicaid consumer-directed option.
- (6) The center shall use electronic information technology to track services provided and to follow-up with individuals served and provide additional information or referrals as needed.
- (7) The department may contract with a private entity to provide the services required under subsections (2) and (3) of this section.
- (8) The cabinet may provide services identified in subsection (3) of this section to individuals of any age who are caregivers of individuals with mental retardation or developmental disability.
- (9) Prior to January 1, 2008, the department shall submit a report to the Interim Joint Committee on Health and Welfare that includes but is not limited to the following information:
- (a) The number of individuals who contacted the center;
 - (b) A description of the categories of questions asked by individuals calling the center; and

- (c) A summary of the services provided, including the community resources to which individuals were referred.

Section 16. KRS 209.005 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall create an Elder Abuse Committee to develop a model protocol on elder abuse and neglect in the Commonwealth, that shall be comprised of various agency representatives that include, but are not limited to:
 - (a) The Department for Community Based Services;
 - (b) The Department for Public Health;
 - (c) The Department for Mental Health and Mental Retardation;
 - (d) The ***Department for Aging and Independent Living*** ~~[Division of Aging Services]~~;
 - (e) The Division of Health Care Facilities and Services;
 - (f) The Office of the Ombudsman;
 - (g) Area Agencies on Aging;
 - (h) Local and state law enforcement official; and
 - (i) Prosecutors.
- (2) The committee shall address issues of prevention, intervention, investigation, and agency coordination of services on a state and local level through interaction with local groups or entities that either directly or indirectly provide services to the elder population, including, but not limited to:
 - (a) Senior citizen centers;
 - (b) Local governmental human service groups;
 - (c) The Sanders-Brown Center on Aging at the University of Kentucky;
 - (d) Long Term Care Ombudsmen; and
 - (e) Other organizations or associations dedicated to serving elder citizens and their families in the Commonwealth.
- (3) The committee shall:
 - (a) Recommend a model protocol for the joint multidisciplinary investigation of reports of suspected abuse, neglect, or exploitation of the elderly;
 - (b) Recommend practices to assure timely reporting of referrals of abuse, neglect, or exploitation required under KRS 209.030(12);
 - (c) Explore the need for a comprehensive statewide resource directory of services for the elderly;
 - (d) Enhance existing public awareness campaigns for elder abuse and neglect; and
 - (e) Provide forums for the exchange of information to educate the elder population and their families on the rights of elders.
- (4) The committee shall produce an annual report of their activities, products, and recommendations for public policy to the Governor and the Legislative Research Commission.

Section 17. KRS 209.500 is amended to read as follows:

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

Section 18. KRS 210.031 is amended to read as follows:

- (1) The cabinet shall establish an advisory committee of sixteen (16) members to advise the Department for Mental Health and Mental Retardation Services of the need for particular services for persons who are deaf or hard-of-hearing.

- (a) At least eight (8) members shall be deaf or hard-of-hearing and shall be appointed by the secretary. Four (4) deaf or hard-of-hearing members, representing one (1) of each of the following organizations, shall be appointed from a list of at least two (2) nominees submitted from each of the following organizations:
 1. The Kentucky Association of the Deaf;
 2. The A.G. Bell Association;
 3. The Kentucky School for the Deaf Alumni Association; and
 4. Self Help for the Hard of Hearing.

The remaining four (4) deaf or hard-of-hearing members shall be appointed by the secretary from a list of at least eight (8) nominees submitted by the Kentucky Commission on the Deaf and Hard of Hearing.
 - (b) One (1) member shall be a family member of a deaf or hard-of-hearing consumer of mental health services and shall be appointed by the secretary from a list of nominees accepted from any source.
 - (c) The head of each of the following entities shall appoint one (1) member to the advisory committee:
 1. The Cabinet for Health and Family Services, Department for Mental Health and Mental Retardation Services;
 2. The Education Cabinet, Office of Vocational Rehabilitation;
 3. The Cabinet for Health and Family Services, *Department for Aging and Independent Living*~~[Division of Aging Services]~~;
 4. The Education Cabinet, Commission on the Deaf and Hard of Hearing;
 5. The Kentucky Registry of Interpreters for the Deaf; and
 6. A Kentucky School for the Deaf staff person involved in education.
 - (d) The remaining member shall be a representative of a regional mental health/mental retardation board, appointed by the commissioner of the Department for Mental Health and Mental Retardation Services from a list composed of two (2) names submitted by each regional mental health/mental retardation board.
- (2) Of the members defined in subsection (1)(a) and (b) of this section, three (3) shall be appointed for a one (1) year term, three (3) shall be appointed for a two (2) year term, and three (3) shall be appointed for a three (3) year term; thereafter, they shall be appointed for three (3) year terms. The members defined under subsection (1)(c) and (d) of this section shall serve with no fixed term of office.
 - (3) The members defined under subsection (1)(a) and (b) of this section shall serve without compensation but shall be reimbursed for actual and necessary expenses; the members defined under subsection (1)(c) and (d) shall serve without compensation or reimbursement of any kind.
 - (4) The Department for Mental Health and Mental Retardation Services shall make available personnel to serve as staff to the advisory committee.
 - (5) The advisory committee shall meet quarterly at a location determined by the committee chair.
 - (6) (a) The advisory committee shall prepare a biennial report which:
 1. Describes the accommodations and the mental health, mental retardation, development disability, and substance abuse services made accessible to deaf and hard-of-hearing persons;
 2. Reports the number of deaf or hard-of-hearing persons served;
 3. Identifies additional service needs for the deaf and hard-of-hearing; and
 4. Identifies a plan to address unmet service needs.
 - (b) The report shall be submitted to the secretary, the commissioner of the Department for Mental Health and Mental Retardation Services, and the Interim Joint Committee on Health and Welfare by July 1 of every odd-numbered year.

Section 19. KRS 210.502 is amended to read as follows:

- (1) There is created the Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses. The commission shall consist of:
 - (a) The secretary of the Cabinet for Health and Family Services;
 - (b) The secretary of the Justice Cabinet;
 - (c) The commissioner of the Department for Mental Health and Mental Retardation Services;
 - (d) The commissioner of the Department for Medicaid Services;
 - (e) The commissioner of the Department of Corrections;
 - (f) The commissioner of the Department of Juvenile Justice;
 - (g) The commissioner of the Department of Education;
 - (h) The executive director of the Office of Vocational Rehabilitation;
 - (i) The director of the Protection and Advocacy Division of the Department of Public Advocacy;
 - (j) The director of the Division of Family Resource and Youth Services Centers;
 - (k) The ~~commissioner~~^{director} of the ***Department for Aging and Independent Living***~~Division of Aging Services~~ of the Cabinet for Health and Family Services;
 - (l) The executive director of the Kentucky Agency for Substance Abuse Policy;
 - (m) The executive director of the Criminal Justice Council;
 - (n) The director of the Administrative Office of the Courts;
 - (o) The chief executive officer of the Kentucky Housing Corporation;
 - (p) The executive director of the Office of Transportation Delivery of the Transportation Cabinet;
 - (q) The commissioner of the Department of Public Health;
 - (r) Three (3) members of the House of Representatives who are members of the Health and Welfare Committee or the Appropriations and Revenue Committee, appointed by the Speaker of the House;
 - (s) Three (3) members of the Senate who are members of the Health and Welfare Committee or the Appropriations and Revenue Committee, appointed by the Senate President;
 - (t) A chairperson and one (1) alternate who is a chairperson of a regional planning council appointed by the secretary of the Cabinet for Health and Family Services from a list of five (5) chairpersons submitted by the Kentucky Association of Regional Mental Health/Mental Retardation Programs;
 - (u) A consumer and one (1) alternate who is a consumer of mental health or substance abuse services, who is over age eighteen (18), appointed by the secretary of the Cabinet for Health and Family Services from a list of up to three (3) consumers submitted by any consumer advocacy organization operating within Kentucky or submitted by any regional planning council established under KRS 210.506; and
 - (v) An adult family member and one (1) alternate who is an adult family member of a consumer of mental health or substance abuse services appointed by the secretary of the Cabinet for Health and Family Services from a list of up to three (3) persons submitted by any family advocacy organization operating within Kentucky or submitted by any regional planning council established under KRS 210.506.
- (2) The secretary of the Cabinet for Health and Family Services and one (1) member of the General Assembly appointed to the commission shall serve as co-chairs of the commission.
- (3) Members designated in subsection (1)(a) to (s) of this section shall serve during their terms of office.
- (4) Members and alternates designated in subsection (1)(t) to (v) of this section shall serve a term of two (2) years and may be reappointed for one (1) additional term. These members may be reimbursed for travel expenses in accordance with administrative regulations governing reimbursement for travel for state employees.

Section 20. KRS 216.541 is amended to read as follows:

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

Section 21. KRS 216.583 is amended to read as follows:

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

Section 22. KRS 216.787 is amended to read as follows:

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

Section 23. KRS 216.793 is amended to read as follows:

- (1) Each application form provided by the employer, or each application form provided by a facility either contracted or operated by the Department for Mental Health and Mental Retardation Services of the Cabinet for Health and Family Services, to the applicant for initial employment in an assisted-living community nursing facility, or nursing pool providing staff to a nursing facility, or in a position funded by the Department for Community Based Services of the Cabinet for Health and Family Services or the **Department for Aging and Independent Living**~~[Division of Aging Services, Department for Human Support Services]~~ of the Cabinet for Health and Family Services and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form or through a process approved by the Justice Cabinet or the Administrative Office of the Courts. The Justice Cabinet or the Administrative Office of the Courts may charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of processing the request.

Section 24. KRS 216B.332 is amended to read as follows:

- (1) To be eligible for a certificate of compliance, a continuing care retirement community shall certify in writing to the cabinet and shall disclose in writing to each of its residents that:
 - (a) None of the health facilities or health services operated by the continuing care retirement community shall apply for or become certified for participation in the Medicaid program; and
 - (b) No claim for Medicaid reimbursement shall be submitted for any person for any health service provided by the continuing care retirement community.
- (2) A continuing care retirement community may establish one (1) bed at the nursing home level of care for every four (4) living units or personal care beds operated by the continuing care retirement community collectively. All residents in nursing home beds shall be assessed using the Health Care Financing Administration or Centers for Medicare and Medicaid Services approved long-term care resident assessment instrument.
- (3) Admissions to continuing care retirement community nursing home beds shall be exclusively limited to on-campus residents. A resident shall not be admitted to a continuing care retirement community nursing home bed prior to ninety (90) days of residency in the continuing care retirement community unless the resident experiences a significant change in health status documented by a physician. No resident admitted to a nursing home bed shall be transferred or discharged without thirty (30) days prior written notice to the resident or his or her guardian.
- (4) A continuing care retirement community shall assist each resident upon a move-out notice to find appropriate living arrangements. Each continuing care retirement community shall share information on alternative living arrangements provided by the ***Department for Aging and Independent Living***~~[Division of Aging Services]~~ at the time a move-out notice is given to a resident. The written agreement executed by the resident and the continuing care retirement community shall contain provisions for assisting any resident who has received a move-out notice to find appropriate living arrangements, prior to the actual move-out date.

Section 25. KRS 11.550 is repealed, reenacted as a new section of KRS Chapter 194A, and amended to read as follows:

- (1) The Telehealth Board is created and placed for administrative purposes under the ***cabinet***~~[Commonwealth Office of Technology]~~. This ten (10) member board shall consist of the:
 - (a) Chancellor, or a designee, of the medical school at the University of Kentucky;
 - (b) Chancellor, or a designee, of the medical school at the University of Louisville;
 - (c) Commissioner, or a designee, of the Department for Public Health;
 - (d) Executive director, or a designee, of the Commonwealth Office of Technology;
 - (e) Chief information officer, or a designee, of the Cabinet for Health and Family Services; and
 - (f) Five (5) members at large, appointed by the Governor, who are health professionals or third parties as those terms are defined in KRS 205.510. To ensure representation of both groups, no more than three (3) health professionals or two (2) third parties shall be members of the board at the same time. These members shall serve a term of four (4) years, may serve no more than two (2) consecutive terms, and shall be reimbursed for their costs associated with attending board meetings.
- (2) The members shall elect a chair and hold bimonthly meetings or as often as necessary for the conduct of the board's business.
- (3) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to:
 - (a) Establish telehealth training centers at the University of Kentucky, University of Louisville, the pediatric-affiliated hospitals at the University of Kentucky and the University of Louisville, and one (1) each in western Kentucky and eastern Kentucky, with the sites to be determined by the board;
 - (b) Develop a telehealth network, to coordinate with the training centers, of no more than twenty-five (25) rural sites, to be established based on the availability of funding and in accordance with criteria set by the board. In addition to these rural sites, the board may identify, for participation in the telehealth network, ten (10) local health departments, five (5) of which shall be administered by the University of Kentucky and five (5) of which shall be administered by the University of Louisville, and any other site that is operating as a telemedicine or telehealth site and that demonstrates its capability to follow the board's protocols and standards;

- (c) Establish protocols and standards to be followed by the training centers and rural sites; and
- (d) Maintain the central link for the network with the Kentucky information highway.
- (4) The board shall, following consultation with the Commonwealth Office of Technology, recommend the processes and procedures for the switching and running of the telehealth network.
- (5) The University of Kentucky and the University of Louisville shall report semiannually to the Interim Joint Committee on Health and Welfare on the following areas as specified by the board through an administrative regulation promulgated in accordance with KRS Chapter 13A.
 - (a) Data on utilization, performance, and quality of care;
 - (b) Quality assurance measures, including monitoring systems;
 - (c) The economic impact on and benefits to participating local communities; and
 - (d) Other matters related to telehealth at the discretion of the board.
- (6) The board shall receive and dispense funds appropriated for its use by the General Assembly or obtained through any other gift or grant.

Section 26. KRS 205.559 is amended to read as follows:

- (1) The Cabinet for Health and Family Services and any regional managed care partnership or other entity under contract with the cabinet for the administration or provision of the Medicaid program shall provide Medicaid reimbursement for a telehealth consultation that is provided by a Medicaid-participating practitioner who is licensed in Kentucky and that is provided in the telehealth network established in ***subsection (3)(b) of Section 25 of this Act***~~[KRS 11.550(3)(b)]~~.
- (2)
 - (a) The cabinet shall establish reimbursement rates for telehealth consultations. A request for reimbursement shall not be denied solely because an in-person consultation between a Medicaid-participating practitioner and a patient did not occur.
 - (b) A telehealth consultation shall not be reimbursable under this section if it is provided through the use of an audio-only telephone, facsimile machine, or electronic mail.
- (3) A health-care facility that receives reimbursement under this section for consultations provided by a Medicaid-participating provider who practices in that facility and a health professional who obtains a consultation under this section shall establish quality-of-care protocols and patient confidentiality guidelines to ensure that telehealth consultations meet all requirements and patient care standards as required by law.
- (4) The cabinet shall not require a telehealth consultation if an in-person consultation with a Medicaid-participating provider is reasonably available where the patient resides, works, or attends school or if the patient prefers an in-person consultation.
- (5) The cabinet shall request any waivers of federal laws or regulations that may be necessary to implement this section.
- (6)
 - (a) The cabinet and any regional managed care partnership or other entity under contract with the cabinet for the administration or provision of the Medicaid program shall study the impact of this section on the health care delivery system in Kentucky and shall, upon implementation, issue a quarterly report to the Legislative Research Commission. This report shall include an analysis of:
 - 1. The economic impact of this section on the Medicaid budget, including any costs or savings as a result of decreased transportation expenditures and office or emergency room visits;
 - 2. The quality of care as a result of telehealth consultations rendered under this section; and
 - 3. Any other issues deemed relevant by the cabinet.
 - (b) In addition to the analysis required under paragraph (a) of this subsection, the cabinet report shall compare telehealth reimbursement and delivery among all regional managed care partnerships or other entities under contract with the cabinet for the administration or provision of the Medicaid program.
- (7) The cabinet shall promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms, records required, and authorization procedures to be followed in conjunction with this section.

Section 27. KRS 216.265 is amended to read as follows:

- (1) The Kentucky e-Health Network Board is created and is attached to the Cabinet for Health and Family Services for administrative and technical support purposes.
- (2) The board shall consist of the following voting members:
 - (a) President, or a designee, of the University of Kentucky, who shall serve as co-chair of the board;
 - (b) President, or a designee, of the University of Louisville, who shall serve as co-chair of the board;
 - (c) Commissioner, or a designee, of the Department for Public Health;
 - (d) Commissioner, or a designee, of the Department for Medicaid Services;
 - (e) Executive director, or a designee, of the Commonwealth Office of Technology; and
 - (f) Nine (9) at-large members appointed by the Governor as follows:
 1. One (1) member engaged in the business of large-scale e-strategy and computer information technology;
 2. One (1) member engaged in the business of health insurance who is employed by a company that has its headquarters in Kentucky;
 3. Two (2) members from a list of four (4) individuals recommended by the Kentucky Hospital Association, one (1) representing rural hospitals, and one (1) representing urban hospitals;
 4. Two (2) physicians actively engaged in the practice of medicine in the Commonwealth from a list of four (4) physicians recommended by the Kentucky Medical Association, or self-nominated;
 5. One (1) member from a company with at least one thousand (1,000) employees selected from a list of four (4) individuals submitted by the Associated Industries of Kentucky;
 6. One (1) member with experience as a physician practice manager; and
 7. One (1) member at large.
- (3) The board shall consist of the following ex officio members who may vote, but shall not be counted toward a quorum:
 - (a) Commissioner, or a designee, of the Department of Commercialization and Innovation;
 - (b) President, or a designee, of the Council on Postsecondary Education;
 - (c) Secretary, or a designee, of the Cabinet for Health and Family Services;
 - (d) Executive director, or a designee, of the Office of Insurance;
 - (e) Two (2) members of the Senate who are members of the Interim Joint Committee on Health and Welfare or the Interim Joint Committee on Banking and Insurance, appointed by the President of the Senate; and
 - (f) Two (2) members of the House of Representatives who are members of the Interim Joint Committee on Health and Welfare or the Interim Joint Committee on Banking and Insurance, appointed by the Speaker of the House.
- (4) Members of the board shall serve a term of four (4) years and may serve two (2) consecutive terms.
- (5) At the end of a term, a member of the board shall continue to serve until a successor is appointed. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed. A member of the board who serves two (2) consecutive full four (4) year terms shall not be reappointed for four (4) years after completion of those terms. Members designated in subsection (2)(a) to (e) of this section and members designated in subsection (3) of this section shall serve on the board only while holding their respective titles.
- (6) A majority of the full membership of the board shall constitute a quorum.
- (7) The board may employ staff or contract with consultants necessary for the performance of the duties of the board, subject to the appropriation of funds.

- (8) No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.
- (9) Members of the board and all committees, except the advisory group created in KRS 216.267(2), shall be entitled to reimbursement for actual and necessary expenses when carrying out official duties of the board in accordance with state administrative regulations relating to travel reimbursements. The board shall meet at least monthly.
- (10) The board may appoint committees or subcommittees with the charge of investigating and making recommendations to the board on specific aspects of the Ke-HN, including but not limited to evidence-based clinical decision support, security of protected information, electronic data interchange, and clinical practice software packages, including the feasibility of developing a software purchasing alliance to decrease the cost of software and tax incentives to encourage members of the network to purchase software deemed by the board to meet the standards of KRS 216.267. The board may appoint the following committees:
 - (a) Clinical Decision Support Committee;
 - (b) Privacy and Security of Protected Health Information Committee;
 - (c) Electronic Data Interchange Committee; and
 - (d) Clinical Software Review Committee.
- (11) The members of committees or subcommittees appointed by the board do not need to be members of the board. The chairs of committees or subcommittees shall be appointed by the board. The frequency of committee or subcommittee meetings shall be established by the board.
- (12) The Clinical Decision Support Committee membership shall include at least the following members:
 - (a) One (1) physician with expertise in health informatics;
 - (b) Two (2) physicians actively engaged in the practice of medicine in this Commonwealth from a list of four (4) physicians recommended by the Kentucky Medical Association, or self-nominated;
 - (c) One (1) representative of a rural hospital and one (1) representative of an urban hospital;
 - (d) One (1) pharmacist;
 - (e) One (1) representative engaged in the business of health-care information technology;
 - (f) Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice; and
 - (g) One (1) member engaged in the business of health insurance who is recommended by the Kentucky Association of Health Plans, Incorporated.
- (13) The Privacy and Security of Protected Health Information Committee shall include at least the following members:
 - (a) One (1) physician actively engaged in the practice of medicine in this Commonwealth;
 - (b) Two (2) members with expertise in HIPAA regulations;
 - (c) Two (2) members engaged in the business of large-scale e-strategy and computer information technology;
 - (d) One (1) member who serves as a computer information officer within the health-care industry;
 - (e) Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice;
 - (f) One (1) member engaged in the business of health insurance who is recommended by the Kentucky Association of Health Plans, Incorporated; and
 - (g) One (1) representative of a hospital.
- (14) The Electronic Data Interchange Committee shall include at least the following members:

- (a) Two (2) members engaged in the business of large-scale e-strategy and computer information technology;
 - (b) Two (2) members engaged in the business of health insurance who are recommended by the Kentucky Association of Health Plans, Incorporated;
 - (c) Chief information officer, or a designee, of the Office of Technology within the Cabinet for Health and Family Services;
 - (d) Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice; and
 - (e) One (1) representative of a hospital.
- (15) The Clinical Software Review Committee shall include at least the following members:
- (a) One (1) member from a company that develops computer software for physician practices;
 - (b) One (1) member engaged in the business of large-scale e-strategy and computer information technology;
 - (c) Three (3) physicians, with one (1) having experience in electronic information technology;
 - (d) Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice;
 - (e) One (1) member engaged in the business of health insurance who is recommended by the Kentucky Association of Health Plans, Incorporated or employed by a company which has its headquarters in Kentucky; and
 - (f) One (1) representative of a hospital.
- (16) The Governor of the Commonwealth of Kentucky may reorganize the Kentucky e-Health Network Board to include the Kentucky Telehealth Board and to reorganize the Telehealth Board under the Cabinet for Health and Family Services. If the Governor deems it appropriate, the reorganization shall create a new Telehealth Committee of the Ke-HN board with the membership and responsibilities as described under **Section 25 of this Act**~~[KRS 11.550]~~ and shall be subject to confirmation by the General Assembly under the requirements of KRS 12.028.

Section 28. KRS 304.17A-138 is amended to read as follows:

- (1) (a) A health benefit plan shall not exclude a service from coverage solely because the service is provided through telehealth and not provided through a face-to-face consultation if the consultation is provided through the telehealth network established under **Section 25 of this Act**~~[KRS 11.550]~~. A health benefit plan may provide coverage for a consultation at a site not within the telehealth network at the discretion of the insurer.
- (b) A telehealth consultation shall not be reimbursable under this section if it is provided through the use of an audio-only telephone, facsimile machine, or electronic mail.
- (2) Benefits for a service provided through telehealth required by this section may be made subject to a deductible, copayment, or coinsurance requirement. A deductible, copayment, or coinsurance applicable to a particular service provided through telehealth shall not exceed the deductible, copayment, or coinsurance required by the health benefit plan for the same service provided through a face-to-face consultation.
- (3) Payment made under this section may be consistent with any provider network arrangements that have been established for the health benefit plan.
- (4) The office shall promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained in conjunction with this section.

Section 29. KRS 342.315 is amended to read as follows:

- (1) The executive director shall contract with the University of Kentucky and the University of Louisville medical schools to evaluate workers who have had injuries or become affected by occupational diseases covered by this chapter. Referral for evaluation may be made to one (1) of the medical schools whenever a medical question is at issue.

- (2) The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the executive director. Except as otherwise provided in KRS 342.316, the clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.
- (3) The executive director or an administrative law judge may, upon the application of any party or upon his own motion, direct appointment by the executive director, pursuant to subsection (1) of this section, of a medical evaluator to make any necessary medical examination of the employee. Such medical evaluator shall file with the executive director within fifteen (15) days after such examination a written report. The medical evaluator appointed may charge a reasonable fee not exceeding fees established by the executive director for those services.
- (4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer or carrier shall pay the cost of the examination. Upon notice from the executive director that an evaluation has been scheduled, the insurance carrier shall forward within seven (7) days to the employee the expenses of travel necessary to attend the evaluation at a rate equal to that paid to state employees for travel by private automobile while conducting state business.
- (5) Upon claims in which it is finally determined that the injured worker was not the employee at the time of injury of an employer covered by this chapter, the special fund shall reimburse the carrier for any evaluation performed pursuant to this section for which the carrier has been erroneously compelled to make payment.
- (6) Not less often than annually the designee of the secretary of the Cabinet for Health and Family Services shall assess the performance of the medical schools and render findings as to whether evaluations conducted under this section are being rendered in a timely manner, whether examinations are conducted in accordance with medically recognized techniques, whether impairment ratings are in conformity with standards prescribed by the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association, and whether coal workers' pneumoconiosis examinations are conducted in accordance with the standards prescribed in this chapter.
- (7) The General Assembly finds that good public policy mandates the realization of the potential advantages, both economic and effectual, of the use of telemedicine and telehealth. The executive director may, to the extent that he finds it feasible and appropriate, require the use of telemedicine and telehealth practices, as authorized under *Section 25 of this Act* ~~[KRS 11.550]~~, in the independent medical evaluation process required by this chapter.

Section 30. In order to reflect the reorganization effectuated by this Act, the reviser of statutes shall replace references in the Kentucky Revised Statutes to the agencies, subagencies, and officers affected by this Act with references to the appropriate successor agencies, subagencies, and officers established by this Act. The reviser shall base these actions on the functions assigned to the new entities by this Act and may consult with officers of the affected agencies, or their designees, to receive suggestions.

Section 31. Notwithstanding KRS 12.028, the General Assembly confirms the Governor's Executive Orders 2006-693, dated June 20, 2006; 2006-1195, dated September 19, 2006; and 2006-1550, dated December 18, 2006, to the extent these orders are not otherwise confirmed or superseded by this Act.

Approved March 21, 2007.

CHAPTER 25

(HCR 30)

A CONCURRENT RESOLUTION confirming the reappointment of Wayne Hunt to the Kentucky Agricultural Development Board.

WHEREAS, KRS 248.707 requires the Governor to appoint members to the Agricultural Development Board subject to confirmation by the Senate and House of Representatives; and

WHEREAS, on July 12, 2006, by Executive Order 2006-811, the Governor reappointed Wayne Hunt to the Agricultural Development Board for a term expiring July 6, 2010; and

WHEREAS, Wayne Hunt has been reappointed as meeting the requirements of KRS 248.707, being an active farmer and who otherwise meets the requirements of KRS 11.160;

NOW, THEREFORE,

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

Section 1. Consent is given to the reappointment of Wayne Hunt to the Agricultural Development Board for a term expiring July 6, 2010.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution and notification of its adoption to Wayne Hunt, 1000 Wayne Hunt Road, Herndon, Kentucky 42236 and to the Governor.

Approved March 21, 2007.

CHAPTER 26

(HB 107)

AN ACT relating to incompatible offices.

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

Section 1. KRS 61.080 is amended to read as follows:

- (1) No person shall, at the same time, be a state officer, a deputy state officer, or a member of the General Assembly, and an officer of any county, city, consolidated local government, or other municipality, or an employee thereof.
- (2) The offices of justice of the peace, county judge/executive, surveyor, sheriff, deputy sheriff, coroner, constable, jailer, and clerk or deputy clerk of a court, shall be incompatible, the one (1) with any of the others. The office of county judge/executive and county school superintendent are incompatible.
- (3) No person shall, at the same time, fill a county office and a municipal office. Notwithstanding the fact that consolidated local governments have both municipal and county powers, persons who hold the office of mayor or legislative council member of a consolidated local government shall not thereby be deemed to hold both a county office and a municipal office. Officers of consolidated local governments shall not, at the same time, fill any other county or municipal office.
- (4) No person shall, at the same time, fill two (2) municipal offices, either in the same or different municipalities.
- (5) The following offices shall be incompatible with any other public office:
 - (a) Member of the Public Service Commission of Kentucky;
 - (b) Member of the Workers' Compensation Board;
 - (c) Commissioner of the fiscal court in counties containing a city of the first class;
 - (d) County indexer;
 - (e) Member of the legislative body of cities of the first class;
 - (f) Mayor and member of the legislative council of a consolidated local government;
 - (g) Mayor and member of the legislative body in cities of the second class; and
 - (h) Mayor and member of council in cities of the fourth class.
- (6) No office in the Kentucky active militia shall be incompatible with any civil office in the Commonwealth, either state, county, district, or city.
- (7) *Service as a volunteer firefighter in a volunteer fire department district or fire protection district formed pursuant to KRS Chapter 65, 75, 95, or 273 shall not be incompatible with any civil office in the Commonwealth, whether state, county, district, or city.*

Approved March 21, 2007.

CHAPTER 27**(HB 370)**

AN ACT relating to temporary motor vehicle tags.

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

Section 1. KRS 186A.100 is amended to read as follows:

- (1) A motor vehicle dealer licensed under KRS 186.070 who sells a vehicle for use upon the highways of this state shall, unless the vehicle is bearing a license plate issued therefor in the name of the purchaser at the time it is delivered to the purchaser, equip the vehicle with a temporary tag executed in the manner prescribed below, which shall be valid for ~~sixty (60)~~~~thirty (30)~~ days from the date the vehicle is delivered to the purchaser. The cost of the tag shall be two dollars (\$2), of which the clerk shall retain one dollar (\$1). A motor vehicle dealer licensed under KRS 186.070 shall apply to the county clerk of the county in which the dealer maintains his principal place of business for issuance of temporary tags. Application shall be made for such tags on forms supplied to the county clerk by the Transportation Cabinet.
- (2) The county clerk of any county who receives a proper application for issuance of temporary tags shall record the number of each tag issued upon the application of the dealer for such tags, or if a group of consecutively numbered temporary tags are issued to a dealer in connection with a single application, record the beginning and ending numbers of the group on the application.
- (3) The clerk shall retain, for a period of two (2) years, one (1) copy of the dealer's temporary tag application, and ensure that it reflects the numbers appearing on the tags issued with respect to such application.
- (4) If the owner of a motor vehicle submits to the county clerk a properly completed application for Kentucky certificate of title and registration pursuant to KRS 186A.120, any motor vehicle required to be registered and titled in Kentucky, that is not currently registered and titled in Kentucky, may be equipped with a temporary tag, which shall be valid for thirty (30) days from the date of issuance, issued by the county clerk for the purpose of operating the vehicle in Kentucky while assembling the necessary documents in order to title and register the vehicle in Kentucky. The Transportation Cabinet may establish administrative regulations governing this section.
- (5) The county clerk may issue a temporary tag to the owner of a motor vehicle that is currently registered and titled in Kentucky. A temporary tag authorized by this subsection shall be used for emergency or unusual purposes as determined by the clerk for the purpose of maintaining the owner's current registration. A temporary tag authorized by this subsection may only be issued by the county clerk and shall be valid for a period of between twenty-four (24) hours and seven (7) days, as determined is necessary by the clerk. A county clerk shall not issue a temporary tag authorized by this subsection unless the owner of the motor vehicle applying for the tag presents proof of motor vehicle insurance pursuant to KRS 304.39-080. On and after January 1, 2006, if the motor vehicle is a personal motor vehicle as defined in KRS 304.39-087, proof of insurance shall be determined by the county clerk as provided in KRS 186A.042. A temporary tag issued pursuant to this subsection shall not be reissued by the county clerk for the same owner and same motor vehicle within one (1) year of issuance of a temporary tag.

Approved March 21, 2007.

CHAPTER 28**(HB 509)**

AN ACT relating to commercial driver's licenses.

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

Section 1. KRS 281A.010 is amended to read as follows:

- (1) "Alcohol" means:

- (a) Beer, ale, port, or stout and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percentum (0.5%) or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;
 - (b) Wine of not less than one-half of one percentum (0.5%) of alcohol by volume; or
 - (c) Distilled spirits, which means that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced; or
 - (d) Any substance containing ethyl alcohol, hydrated oxide of ethyl, spirit of wine, or any distilled spirits including, but not limited to, ethanol, methanol, propanol, and isopropanol.
- (2) "Alcohol concentration" means:
- (a) The number of grams of alcohol per one hundred (100) milliliters of blood;
 - (b) The number of grams of alcohol per two hundred ten (210) liters of breath; or
 - (c) The number of grams of alcohol per sixty-seven (67) milliliters of urine.
- (3) "Cabinet" means the Transportation Cabinet of the Commonwealth of Kentucky.
- (4) "Commerce" means:
- (a) Any trade, traffic, or transportation within the jurisdiction of the United States between a place in a state and a place outside of the state, including a place outside of the United States; and
 - (b) Trade, traffic, and transportation in the United States that affects any trade, traffic, and transportation described in paragraph (a) of this subsection.
- (5) "Commercial driver's license," or CDL, means a license issued to an individual in accordance with the requirements of this chapter or, if the license is issued by another state in accordance with the Federal Commercial Motor Vehicle Safety Act, to an individual that authorizes the individual to drive any class of commercial motor vehicle.
- (6) "Commercial driver's license information system" or CDLIS means the national information system established to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.
- (7) "Commercial driver's instruction permit" means a permit issued pursuant to KRS 281A.120.
- (8) "Commercial motor vehicle," or CMV, means a motor vehicle or combination motor vehicle used in commerce that is:
- (a) Designed to carry property and has a gross vehicle weight rating as determined by federal regulation which has been adopted into cabinet administrative regulations pursuant to KRS Chapter 13A;
 - (b) Designed to transport sixteen (16) or more passengers, including the driver;
 - (c) Transporting hazardous materials and is required to be placarded in accordance with Title 49, Code of Federal Regulations, Part 172; or
 - (d) Any other vehicle that is required by cabinet administrative regulation, pursuant to KRS Chapter 13A, to be operated by a licensed commercial driver.
- (9) "Controlled substance" means any substance so classified under Section 102(6) of the Controlled Substances Act, 21 U.S.C. sec. 802(6), and includes all substances listed on Schedules I through V, of Title 21, Code of Federal Regulations, Part 1308, as adopted by the Transportation Cabinet by administrative regulation pursuant to KRS Chapter 13A. It shall also include those substances defined or listed in KRS Chapter 218A.
- (10) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty, *a plea of nolo contendere*, or Alford plea entered and accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
- (11) "Disqualification" means any of the following actions:

- (a) The suspension, revocation, or cancellation of a CDL by the Commonwealth or the jurisdiction of issuance;
 - (b) Any withdrawal of a person's privilege to drive a commercial motor vehicle by the Commonwealth or another jurisdiction as a result of a violation of state or local law relating to motor vehicle traffic control, other than parking, vehicle weight, or vehicle defect violations; or
 - (c) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. pt. 391.
- (12) "Drive" means to drive, operate, or be in physical control of a motor vehicle.
 - (13) "Driver" means any person who drives, operates, or is in physical control of a commercial motor vehicle, or who is required to hold a commercial driver's license.
 - (14) "Driver's license" means a license issued by a state to an individual that authorizes the individual to drive a motor vehicle.
 - (15) "Employee" means any operator of a commercial motor vehicle, including full-time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers and independent, owner-operator contractors while in the course of operating a commercial motor vehicle who are either directly employed by, under lease to, or operating in a manner indicating employment to an employer.
 - (16) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.
 - (17) "Felony" means any offense under state or federal law that is punishable by death or imprisonment for a term exceeding one (1) year.
 - (18) "Gross combination weight rating," or GCWR, is the gross vehicle weight rating of power unit plus the gross vehicle weight rating of any towed unit. In the absence of a value specified by the manufacturer, GCWR shall be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit and load therein.
 - (19) "Gross vehicle weight rating," or GVWR, means the value specified by the manufacturer as the maximum loaded weight of a single, a combination or an articulated vehicle.
 - (20) "Hazardous materials" means the definition found in Section 103 of the Hazardous Materials Transportation Law, 49 U.S.C. sec. 5101 et seq.
 - (21) "Highway" shall include any way or place of any nature when any part of it is open to the use of the public as a matter of right, license, or privilege for the use of vehicular traffic.
 - (22) "Imminent hazard" means a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a danger to health, property, or the environment exists.
 - (23) "Moped" shall have the same meaning as in KRS 186.010(5).
 - (24) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but shall not include any vehicle, machine, tractor, trailer, or semitrailers operated exclusively on a rail.
 - (25) "NDR" means the national driver register.
 - (26) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 C.F.R. sec. 386.72, 392.5, 395.13, or 396.9; comparable laws or regulations; or the North American Uniform Out-of-Service Criteria.
 - (27) "Resident" means a person who has established Kentucky as his or her state of domicile. Proof of residency shall include but not be limited to a deed or property tax bill, utility agreement or utility bill, or rental housing agreement.
 - (28) "School bus" means a vehicle that meets the specification of KRS 156.153 used to transport preprimary, primary, or secondary school students between school and home, or to and from school-sponsored events. A school bus shall not include a bus used as a common carrier.

- (29) "Serious traffic violation" means a conviction when operating a commercial motor vehicle of:
- (a) Excessive speeding, involving a single charge of any speed fifteen (15) miles per hour or more, above the specified speed limit;
 - (b) Reckless driving, as defined under state or local law, including conviction of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;
 - (c) Improper or erratic traffic lane changes;
 - (d) Following the vehicle ahead too closely;
 - (e) A violation of any state or local law related to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident;
 - (f) Driving a commercial motor vehicle without a CDL;
 - (g) Driving a commercial motor vehicle without a CDL in one's possession or refusing to display a CDL upon request;
 - (h) Driving a commercial motor vehicle without the proper class of CDL or endorsements, or both, for the specific vehicle type or types being operated or for the passengers or type or types of cargo being transported; or
 - (i) Any conviction of an offense that requires mandatory suspension under KRS 186.560 or a serious violation as defined by Title 49 of the Code of Federal Regulations Part 383 or as amended by the Federal Highway Administration.
- (30) "State" means a state of the United States and the District of Columbia.
- (31) "State police" means the Department of State Police of the Commonwealth of Kentucky.
- (32) *"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn along a public highway, except devices moved by human or animal power, used exclusively upon stationary rails or tracks, or which derives its power from overhead wires.*

Section 2. KRS 281A.050 is amended to read as follows:

The provisions of this chapter shall not apply to:

- (1) Drivers of firefighting and other emergency equipment;
- (2) Drivers of **commercial motor**~~[military]~~ vehicles if those persons are:
 - (a) Military personnel~~[in uniform]~~; **and**
 - (b) Operating the vehicles in pursuit of a military purpose;~~[and~~
 - ~~(c) Properly licensed by the military;]~~
- (3) Drivers of **farm** vehicles that are:
 - (a) Used **to transport agricultural products, farm machinery, or farm supplies to or from a farm**~~[exclusively in farm-to-market agricultural transportation]~~;
 - (b) **Not used in the operations of a common or contract motor carrier**~~[Operated in private carriage]~~;
 - (c) Used within one hundred fifty (150) highway miles of the **farmer's farm**~~[point of origin]~~; and
 - (d) Controlled and operated by a **farmer, including operation by**~~[farmer's]~~ employees or family members~~[if the motor vehicle is controlled by a farmer]~~; and
- (4) Drivers of vehicles that:
 - (a) Are designed as temporary living quarters for recreational, camping, or travel use; and
 - (b) Operate on their own motor power or are mounted on or drawn by another vehicle.

Section 3. KRS 281A.080 is amended to read as follows:

- (1) Each employer shall require the applicant to provide the information specified in KRS 281A.070. He shall inform the applicant that the information provided may be used or the applicant's previous employers may be contacted for the purpose of investigating the applicant's work history.
- (2) No employer shall knowingly allow, permit, or authorize a driver to drive a commercial vehicle during any period in which the driver:
 - (a) Has had his commercial driver's license suspended, revoked, or canceled by any state;
 - (b) Is currently disqualified from driving a commercial vehicle;
 - (c) Is subject to an out of service order in any state;
 - (d) Has more than one (1) driver's license;~~{or}~~
 - (e) Does not currently hold a valid commercial driver's license; **or**
 - (f) ***Is in violation of any of the railroad crossing offenses or conduct set forth in KRS 189.500, 189.560, or 189.565.***

Section 4. KRS 281A.150 is amended to read as follows:

- (1) Every person seeking a commercial driver's license or a commercial driver's instruction permit shall first apply in person to the circuit clerk of the county in which the applicant resides or in the county where the person is enrolled in a driver training school if the applicant is not a resident. The application shall be in the form prescribed by KRS 281A.140 as provided by the cabinet. Except as provided in KRS 281A.160(6), each time a person applies for a commercial driver's license, an instruction permit, or seeks to upgrade or change his commercial driver's license, the person shall be required to:
 - (a) Update the application; and
 - (b) Submit the appropriate fee to the circuit clerk.
- (2) The cabinet shall set fees by administrative regulation, pursuant to KRS Chapter 13A, for the following applications that shall not exceed:
 - (a) ***Except as provided in paragraph (g) of this subsection***, forty dollars (\$40) for each application for a commercial driver's license. The fee shall be based on the class, type of license, endorsement, restriction, or tests to be taken;
 - (b) Thirty-five dollars (\$35) for each application for a commercial driver's instruction permit;
 - (c) Fifteen dollars (\$15) for each application for a change or addition in class or type of license, endorsement, or restriction;
 - (d) Forty dollars (\$40) for each application for a duplicate if it is the first duplicate applied for within the time period for which the original license was issued. Sixty dollars (\$60) for a second or subsequent duplicate applied for within the time period for which the original license was issued. The fees required for a duplicate shall be in addition to fees charged under subsection (2)(c) of this section;
 - (e) Thirty-five dollars (\$35) for each application for renewal of a commercial driver's license;
 - (f) Sixty dollars (\$60) for each application for a transfer of a commercial driver's license; and
 - (g) Twenty dollars (\$20) for each application for ***an initial and renewal***~~{a}~~ commercial driver's license with an "S" ~~*endorsement*~~~~{restriction for the following persons:~~
 1. ~~A person who operates a school bus;~~
 2. ~~A person who is employed by a mass transit authority created under the provisions of KRS Chapter 96A;~~
 3. ~~A person who drives a vehicle that is operated under a nonprofit bus certificate established pursuant to KRS 281.619;~~
 4. ~~A person who drives a vehicle registered pursuant to KRS 186.050(6); or~~

~~5. A person who drives a fixed route bus system vehicle that is operated by a public entity pursuant to the provisions of KRS Chapter 281.~~

- (3) All fees remitted to the clerk shall be nonrefundable regardless of whether the applicant completes the requirements for a commercial driver's license or is tested.
- (4) All fees collected for the issuance of a commercial driver's license or a commercial driver's instruction permit shall be deposited into trust and agency accounts to be used exclusively for the administration and implementation of this chapter, except as prescribed in subsection (5) of this section. The accounts shall not lapse but shall be continuing from year to year.
- (5) All fees collected pursuant to this section, shall be allocated between the Transportation Cabinet and Department of State Police, except a fifty cent (\$0.50) issuance fee shall be allocated during the first two (2) years following the effective date of January 1, 1991, to the Administrative Office of the Courts in a trust and agency account for the use of the circuit clerks and thereafter allocated to the general fund from issuance of a commercial driver's license permit. A three dollar (\$3) issuance fee shall be allocated during the first two (2) years following the effective date of January 1, 1991, to the Administrative Office of the Courts in a trust and agency account for the use of the circuit clerks and thereafter allocated to the general fund from issuance of a commercial driver's license.
- (6) Any applicant who seeks reinstatement of his commercial driving privilege after a suspension, withdrawal, revocation, or disqualification shall pay a reinstatement fee of fifty dollars (\$50) in addition to those fees required by subsection (2) of this section and shall satisfy the requirements of KRS 281A.160. This fee shall not be required if his commercial driving privilege was withdrawn only as a result of the withdrawal of his privilege to drive a noncommercial motor vehicle.

Section 5. KRS 281A.160 is amended to read as follows:

- (1) (a) Except as provided in subsection (4) of this section, the State Police shall be responsible for administering both the knowledge and skills test required by KRS 281A.130.
- (b) Applicants who fail the written knowledge test shall be permitted to retake the written test on the next day the tests are administered. Applicants who fail the written test six (6) times shall be required to wait three (3) days before taking the knowledge test again. Applicants who subsequently fail the written test three (3) additional times shall be required to wait three (3) days prior to retaking the test.
- (2) (a) Except as provided for in subsection (3) of this section, at the time a CDL permit is issued:
 1. An applicant who has held a Kentucky operator's license for thirty (30) days or longer shall pay a skills-testing fee of fifty dollars (\$50); and
 2. An applicant who has held a Kentucky operator's license for less than thirty (30) days shall pay a skills-testing fee of one hundred fifty dollars (\$150).
- (b) There is created within the State Treasury a trust fund to be known as the State Police CDL skills-testing fund. The fund shall be administered by the State Police and shall receive all skills-testing and retesting fees collected under subsections (2)(a) and (6)(c) of this section, in addition to any grants, gifts, or appropriations of state or federal moneys and any interest earned on moneys in the fund. Moneys in the fund shall not lapse and shall be carried forward to the next succeeding fiscal year. The State Police CDL skills-testing fund shall be used by the State Police to contract with and train civilian CDL skills examiners and to improve the logistics of the CDL skills-testing process.
- (c) The State Police, upon request of an applicant who has passed both the vision and knowledge tests, may schedule the applicant for the skills test at the first available test date at a test site designated by the State Police but not less than ten (10) days after the applicant has filed the application and been issued a CDL permit. Except in extenuating circumstances, a retest for a failed portion of the skills test shall be given within three (3) days of a request of a retest.
- (d) An applicant shall provide a class representative commercial vehicle, for the class of CDL for which the applicant is testing, in which to take the skills test. Unless the State Police grant an exemption at the time the application for testing is made, the vehicle supplied under this paragraph shall be unloaded. Upon arrival for the skills test, the applicant shall have in his or her possession a valid Kentucky operator's license, a valid CDL permit, and a current U.S. Department of Transportation physical card.

A CDL-licensed driver who is at least twenty-one (21) years old shall accompany the applicant at all times the applicant is in operation of a commercial vehicle.

- (3) A testing fee shall not be charged to an individual applying for a CDL with an "S" ~~endorsement~~~~restriction~~ as defined in KRS 281A.170.
- (4) The State Police may authorize a third party to administer the skills test specified by this section if:
 - (a) The test is the same that would otherwise be administered by the state; and
 - (b) The third party has entered into an agreement with this Commonwealth which complies with requirements of Title 49, Code of Federal Regulations, Part 383.75, as adopted by the Transportation Cabinet.
- (5) The State Police shall promulgate administrative regulations under KRS Chapter 13A that establish procedures that ensure an arm's-length relationship is maintained between a third-party tester and any owner, officer, or employee of any program offering commercial truck driving under the Kentucky Community and Technical College System or a proprietary school licensed under KRS Chapter 165A.
- (6)
 - (a) Applicants shall be permitted to take the skills test for a particular class vehicle an unlimited number of times; however, an applicant shall not retest more than one (1) time in any twenty-four (24) hour period.
 - (b) The skills test shall consist of three (3) separate portions: pre-trip inspection, basic maneuvering, and road skills. An applicant must achieve a score of at least eighty percent (80%) on each portion of the skills test before a CDL may be issued to the applicant. An applicant who passes one (1) or more portions of the skills test but does not pass all portions of the skills test shall retest only on those portions of the skills test the applicant failed.
 - (c) An applicant who fails any portion of the skills test four (4) times shall be notified by the State Police that the applicant is required to wait one (1) week and pay a retest fee of fifty dollars (\$50) before retaking a portion of this skills test again.
 - (d) Failure of an applicant to notify the State Police prior to missing an appointment for a skills test shall be considered a failure, on all parts of the skills test scheduled to be given, for the purposes of determining number of failures, waiting periods, and retesting fees under paragraph (c) of this subsection for individual applicants. A missed appointment failure under this paragraph shall not be reported as a failure to the board.
 - (e) The provisions of KRS 281A.150 notwithstanding, an application fee shall not be charged for each test that is retaken as a result of a failing score.
- (7) An applicant who seeks reinstatement of a commercial driver's license after a suspension, withdrawal, revocation, or disqualification of less than one (1) year shall pay the reinstatement fee as prescribed by KRS 281A.150(6) and shall receive his commercial driver's license with all endorsement and restrictions that were in effect at the time of suspension. An applicant who seeks reinstatement of a commercial driver's license after a suspension, withdrawal, revocation, or disqualification of one (1) year or more shall submit to the skills, knowledge, and vision tests.
- (8)
 - (a) The commissioner of the Kentucky State Police shall promulgate administrative regulations pursuant to the provisions of KRS Chapter 13A to implement the provisions of this section.
 - (b) Within ninety (90) days of April 22, 2006, the State Police shall promulgate administrative regulations under KRS Chapter 13A to set forth the qualifications for contract examiners retained under subsection (2)(b) of this section.

Section 6. KRS 281A.170 is amended to read as follows:

- (1) The commercial driver's license shall be marked "commercial driver's license" and "CDL" and shall be, to the maximum extent practicable, tamper proof. It shall include but is not limited to the following information:
 - (a) The name and present resident address of the licensee;
 - (b) The licensee's color photograph;
 - (c) A physical description of the licensee including sex, height, weight, and eye color;

- (d) The licensee's date of birth;
 - (e) The licensee's signature;
 - (f) The class or type of commercial motor vehicle or vehicles that the person is authorized to drive together with any endorsements or restrictions;
 - (g) The name of this state;
 - (h) The dates between which the license is valid; and
 - (i) Any other information required by the cabinet, except for a person's Social Security number.
- (2) A commercial driver's license shall be issued with classifications, endorsements, and restrictions. Vehicles that require an endorsement shall not be driven unless the proper endorsement appears on the license and the applicant has passed the knowledge and skills test required by the State Police.
- (a) Classifications:
 - 1. Class A - Any combination of vehicles with a gross vehicle weight rating of twenty-six thousand and one (26,001) pounds or more, if the gross vehicle weight rating of the vehicle being towed is in excess of ten thousand (10,000) pounds. Licensees with an "A" classification may with the proper endorsement drive Class B and C vehicles.
 - 2. Class B - Any single vehicle with a gross vehicle weight rating of twenty-six thousand and one (26,001) pounds or more, and any vehicle towing a vehicle not in excess of ten thousand (10,000) pounds. Licensees with a "B" classification may with the proper endorsements drive Class C vehicles.
 - 3. Class C - Any single vehicle with a gross weight rating of less than twenty-six thousand and one (26,001) pounds or any vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand (10,000) pounds which includes:
 - a. Vehicles designed to transport sixteen (16) or more passengers, including the driver; or
 - b. Vehicles used in the transportation of hazardous materials which requires the vehicle to be placarded under Title 49, Code of Federal Regulations, Part 172, sub-part F, as adopted by administrative regulations of the cabinet, pursuant to KRS Chapter 13A.
 - 4. Class D - All other vehicles not listed in any other class.
 - 5. Class E - Moped only.
 - 6. Class M - Motorcycles. Licensees with a "M" classification may also drive Class E vehicles.
 - (b) Endorsements:
 - 1. "H" - Authorizes the driver to operate a vehicle transporting hazardous materials.
 - 2. "T" - Authorizes operation of double trailers and triple trailers in those jurisdictions allowing the operation of triple trailers.
 - 3. "P" - Authorizes operation of vehicles carrying passengers.
 - 4. "N" - Authorizes operation of tank vehicles.
 - 5. "X" - Authorizes operation of combination of hazardous materials and tank vehicle endorsements.
 - 6. "R" - Authorizes operation of all other endorsements not otherwise specified.
 - 7. "S" - Authorizes operation of school buses.
 - (c) Restrictions:
 - 1. "K" - Restricts the driver to operation of vehicles not equipped with airbrakes.
 - 2. "I" - Restricts the driver to Kentucky intrastate commerce driving.
 - 3. ~~["S" - Restricts the driver to school buses, church buses, buses operated by a mass transit authority created under the provisions of KRS Chapter 96A, buses operated under a nonprofit bus~~

~~certificate established pursuant to KRS 281.619, and fixed route buses operated by a public entity pursuant to the provisions of KRS Chapter 281.~~

- ~~4. —~~ "L" - Shall not include a Class "A" bus.
 - ~~4. {5-}~~ "J" - Shall not include a Class "A" or "B" bus.
 - ~~5. {6-}~~ "O" - Shall not include tractor, semitrailer style vehicles.
 - ~~6. {7-}~~ "Z" - Exempt intracity zones for commercial vehicles.
 - ~~7. {8-}~~ "0-9" - Other restrictions.
 - ~~8. {9-}~~ "A" - Restricts the driver to operation of vehicles equipped with an automatic transmission because the person conducted the required skills test in a commercial vehicle equipped with an automatic transmission. A person wanting to remove this restriction in order to operate a vehicle with a manual transmission shall be required to successfully complete a skills test while operating a commercial vehicle equipped with a manual transmission.
- (3) Within ten (10) days after issuing a commercial driver's license, the cabinet shall notify the commercial driver's license information system of that fact, providing all information required to ensure identification of the person.
 - (4) A commercial driver's license issued to a resident pursuant to this chapter shall expire in four (4) years unless the license was issued to a resident under the age of twenty-one (21). A commercial driver's license issued to a person who is not a resident shall be issued for one (1) year and shall not be renewable. The fee for a commercial driver's license issued to a nonresident shall be the same as the fee charged to a resident.
 - (5) A person under the age of twenty-one (21) shall not be licensed to operate a Class A, B, or C vehicle unless he has an "I" restriction. A commercial driver with an "I" restriction shall not drive a commercial motor vehicle in interstate commerce, unless he is exempt pursuant to 49 C.F.R. 391.2. A commercial driver under the age of twenty-one (21) shall not be allowed to operate a school bus or a vehicle transporting hazardous material in intrastate commerce.
 - (6) The holder of a commercial driver's license shall be considered to hold a valid Kentucky driver's license issued under the provisions of KRS 186.412.

Section 7. KRS 281A.190 is amended to read as follows:

- (1) A person who holds or is required to hold a CDL shall be disqualified from driving a commercial motor vehicle for a period of one (1) year if convicted of:
 - (a) Driving or being in physical control of a motor vehicle under the influence of alcohol or a controlled substance;
 - (b) Driving or being in physical control of a motor vehicle while the alcohol concentration of the person's blood or breath or urine is four hundredths (0.04) or more;
 - (c) Leaving the scene of an accident involving a motor vehicle driven by a person who holds or is required to hold a CDL;
 - (d) Using a motor vehicle in the commission of any felony listed in KRS 186.560;
 - (e) Refusing to submit to testing as required by KRS 281A.220 when driving a motor vehicle;
 - (f) Committing a first violation of driving a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled, or when the person is disqualified from operating a commercial motor vehicle; or
 - (g) Causing a fatality through negligent or criminal operation of a commercial motor vehicle.
- (2) A person who holds or is required to hold a CDL shall be disqualified for life if convicted of two (2) or more violations of any of the offenses specified in subsection (1) of this section or any combination of those offenses, arising from two (2) or more separate incidents. The provisions of this subsection shall only apply to convictions that occurred after the disqualification dates established by the Federal Motor Carrier Safety

Administration. The Transportation Cabinet shall set forth those dates in an administrative regulation promulgated pursuant to KRS Chapter 13A.

- (3) If any violation specified in subsection (1) of this section occurred while transporting a hazardous material required to be placarded, the person who holds or is required to hold a CDL shall be disqualified for a period of three (3) years.
- (4) Notwithstanding any other provisions of law, a period of suspension, revocation, or disqualification imposed under the provisions of this chapter shall not be reduced. However, in accordance with the provisions of Title 49, Code of Federal Regulations, Part 383, the cabinet may establish guidelines including conditions under which a disqualification of not less than ten (10) years may be imposed.
- (5) A person who holds or is required to hold a CDL shall be disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.
- (6) A person who holds or is required to hold a CDL shall be disqualified from driving a commercial motor vehicle for a period of sixty (60) days if convicted of two (2) serious traffic violations, or one hundred twenty (120) days *consecutively* if convicted of three (3) serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three (3) year period.
- (7) A person who holds or is required to hold a CDL shall be disqualified for the first offense from driving a commercial motor vehicle for six (6) months if the person has been convicted of committing any of those offenses enumerated in KRS 186.610 involving a commercial motor vehicle, commercial driver's license, or application for that license. For the second and each subsequent offense, the person shall be disqualified from operating a commercial motor vehicle for a period of one (1) year.
- (8) The cabinet shall deny a person a commercial driver's license or shall suspend, revoke, or cancel his commercial driving privilege, subject to a hearing conducted in accordance with KRS 189A.107, when the cabinet has reason to believe that the person refused to submit to a test to determine his alcohol concentration while driving a commercial motor vehicle.
- (9) If a person who holds or is required to hold a CDL is convicted of any of the railroad crossing offenses or conduct enumerated in KRS 189.500, 189.560, and 189.565, then the person shall be disqualified from operating a commercial motor vehicle for a period of:
 - (a) Sixty (60) days for the first offense;
 - (b) One hundred twenty (120) days for the second offense within a three (3) year period; and
 - (c) One (1) year for the third or subsequent offense within a three (3) year period.
- (10) If a person who holds or is required to hold a CDL violates an out-of-service order while transporting nonhazardous materials, then the person shall be disqualified from operating a commercial motor vehicle for a period of:
 - (a) Ninety (90) days for the first offense;
 - (b) One (1) year for the second offense in a separate incident within a ten (10) year period; and
 - (c) Three (3) years for the third or subsequent offense in a separate incident within a ten (10) year period.
- (11) If a person who holds or is required to hold a CDL violates an out-of-service order while transporting hazardous materials required to be placarded under the 49 U.S.C. sec. 5101 et seq., or operating a commercial motor vehicle designed to transport sixteen (16) or more passengers, including the driver, then the person shall be disqualified from operating a commercial motor vehicle for a period of:
 - (a) One hundred eighty (180) days for the first offense; and
 - (b) Three (3) years for the second or subsequent offense in a separate incident within a ten (10) year period.
- (12) After disqualifying a commercial driver's license holder or suspending, revoking, or canceling a commercial driver's license, the Transportation Cabinet shall update its records to reflect that action within ten (10) days of receipt. After disqualifying a commercial driver's license holder or suspending, revoking, or canceling an out-of-state commercial driver's license holder's privilege to operate a commercial motor vehicle for at least sixty (60) days, the Transportation Cabinet shall notify the licensing authority of the state which issued the

commercial driver's license or commercial driver's instruction permit with this information within ten (10) days. The notification shall include both the disqualification and the violation that resulted in the disqualification, suspension, cancellation, or revocation.

- (13) Upon notice from the Federal Motor Carrier Safety Administration that a driver has been determined to be an imminent hazard and has been disqualified from operating a commercial motor vehicle, the cabinet shall act in accordance with the provisions of 49 C.F.R. sec. 383.52. The cabinet shall notify the driver of the disqualification, which shall not exceed one (1) year in duration, and of the right to appeal to the Federal Motor Carrier Safety Administration in accordance with 49 C.F.R. sec. 383.52.

Section 8. KRS 281A.240 is amended to read as follows:

- (1) Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle in this state if the person has a valid commercial driver's license or commercial driver's license instruction permit issued by any state, **Canada, or Mexico** in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver's license, if the person's driving privilege is not suspended, revoked, or canceled; and if the person is not disqualified from driving a commercial motor vehicle or subject to an out-of-service order.
- (2) The Commonwealth of Kentucky shall give all out-of-state convictions full faith and credit and treat them for sanctioning purposes under this chapter as if they occurred in this state. Except as otherwise provided, when in this chapter reference is made to an offense which is a violation of a provision of this chapter or other Kentucky state law, the reference shall be deemed to include offenses under any local ordinance, any federal law, any law or local ordinance of another state substantially similar to any provision of the Kentucky Revised Statutes.

Section 9. KRS 281A.270 is amended to read as follows:

The Transportation Cabinet may adopt in whole or in part those federally mandated requirements set forth in Title 49, Code of Federal Regulations, Part 383, notwithstanding the fact that the provisions may conflict with other provisions of this chapter. ~~The authority granted in this section shall expire January 1, 1992.~~

Approved March 21, 2007.

CHAPTER 29

(SB 65)

AN ACT relating to sex offender registration.

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

Section 1. KRS 17.500 is amended to read as follows:

As used in KRS 17.500 to 17.580:

- (1) "Approved provider" means a mental health professional licensed or certified in Kentucky whose scope of practice includes providing mental health treatment services and who is approved by the Sex Offender Risk Assessment Advisory Board, under administrative regulations promulgated by the board, to provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020;
- (2) "Cabinet" means the Justice Cabinet;
- (3) (a) Except as provided in paragraph (b) of this subsection, "criminal offense against a victim who is a minor" means any of the following offenses if the victim is under the age of eighteen (18) at the time of the commission of the offense:
 1. Kidnapping, as set forth in KRS 509.040, except by a parent;
 2. Unlawful imprisonment, as set forth in KRS 509.020, except by a parent;
 3. Sex crime;
 4. Promoting a sexual performance of a minor, as set forth in KRS 531.320;

5. Promoting prostitution, as set forth in KRS 529.030, 529.040, and 529.050, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18);
 6. Use of a minor in a sexual performance, as set forth in KRS 531.310;
 7. Sexual abuse, as set forth in KRS 510.120 and 510.130;
 8. Unlawful transaction with a minor in the first degree as set forth in KRS 530.064(1)(a);
 9. Any offense involving a minor or depictions of a minor as set forth in KRS Chapter 531;
 10. Any attempt to commit any of the offenses described in subparagraphs 1. to 9. of this paragraph; and
 11. Solicitation to commit any of the offenses described in subparagraphs 1. to 9. of this paragraph;
- (b) Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense;
- (4) "Law enforcement agency" means any lawfully organized investigative agency, sheriff's office, police unit, or police force of federal, state, county, urban-county government, charter county, city, consolidated local government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws;
- (5) "Registrant" means:
- (a) Any person eighteen (18) years of age or older at the time of the offense or any youthful offender, as defined in KRS 600.020, who has committed:
 1. A sex crime; or
 2. A criminal offense against a victim who is a minor; or
 - (b) Any person required to register under KRS 17.510; or
 - (c) Any sexually violent predator; or
 - (d) Any person whose sexual offense has been diverted pursuant to KRS 533.250, until the diversionary period is successfully completed;
- (6) "Registrant information" means the name, including any lawful name change together with the previous name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, fingerprints, a photograph, aliases used, residence, *electronic mail address and any instant messaging, chat, or other Internet communication name identities*, a brief description of the crime or crimes committed, and other information the cabinet determines, by administrative regulation, may be useful in the identification of registrants;
- (7) "Residence" means any place where a person sleeps. For the purposes of this statute, a registrant may have more than one (1) residence. A registrant is required to register each residence address;
- (8) "Sex crime" means:
- (a) A felony offense defined in KRS Chapter 510, or KRS 530.020, 530.064(1)(a), 531.310, or 531.320;
 - (b) A felony attempt to commit a felony offense specified in paragraph (a) of this subsection; or
 - (c) A federal felony offense, a felony offense subject to a court-martial of the United States Armed Forces, or a felony offense from another state or a territory where the felony offense is similar to a felony offense specified in paragraph (a) of this subsection;
- (9) "Sexual offender" means any person convicted of, pleading guilty to, or entering an Alford plea to a sex crime as defined in this section, as of the date the verdict is entered by the court;
- (10) "Sexually violent predator" means any person who has been subjected to involuntary civil commitment as a sexually violent predator, or a similar designation, under a state, territory, or federal statutory scheme;
- (11) "The board" means the Sex Offender Risk Assessment Advisory Board created under KRS 17.554; and

- (12) "Victim" has the same meaning as in KRS 421.500.

Approved March 21, 2007.

CHAPTER 30

(SB 125)

AN ACT relating to waste tires.

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

Section 1. KRS 224.01-010 is amended to read as follows:

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

- (1) "Air contaminant" includes smoke, dust, soot, grime, carbon, or any other particulate matter, radioactive matter, noxious acids, fumes, gases, odor, vapor, or any combination thereof;
- (2) "Air contaminant source" means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops, and stores, and heating and power plants and stations, buildings and other structures of all types, including single and multiple family residences, apartments, houses, office buildings, public buildings, hotels, restaurants, schools, hospitals, churches, and other institutional buildings, automobiles, trucks, tractors, buses and other motor vehicles, garages and vending and service locations and stations, railroad locomotives, ships, boats and other waterborne craft, portable fuel-burning equipment, incinerators of all types (indoor and outdoor), refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing;
- (3) "Air pollution" means the presence in the outdoor atmosphere of one (1) or more air contaminants in sufficient quantities and of such characteristics and duration as is or threatens to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the comfortable enjoyment of life or property;
- (4) "Closure" means the time at which a waste treatment, storage, or disposal facility permanently ceases to accept wastes, and includes those actions taken by the owner or operator of the facility to prepare the site for post-closure monitoring and maintenance or to make it suitable for other uses;
- (5) "Commission" means the Environmental Quality Commission;
- (6) "Compost" means solid waste which has undergone biological decomposition of organic matter, been disinfected using composting or similar technologies, been stabilized to a degree which is potentially beneficial to plant growth and which is approved for use or sale as a soil amendment, artificial topsoil, growing medium amendment, or other similar uses;
- (7) "Composting" means the process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can easily and safely be stored, handled, and used in an environmentally acceptable manner:
 - (a) "Composting" may include a process which creates an anaerobic zone within the composting material;
 - (b) "Composting" does not include simple exposure of solid waste under uncontrolled conditions resulting in natural decay;
- (8) "Demonstration" means the initial exhibition of a new technology, process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness;
- (9) "Cabinet" means the Environmental and Public Protection Cabinet;
- (10) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;
- (11) "District" means an air pollution control district as provided for in KRS Chapter 77;

- (12) "Effluent limitations" means any restrictions or prohibitions established under state law which include, but are not limited to, effluent limitations, standards of performance for new sources, and toxic effluent standards on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into waters;
- (13) "Generator" means any person, by site, whose act or process produces waste;
- (14) "Materials recovery facility" means a solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of those materials;
- (15) "Municipal solid waste disposal facility" means any type of waste site or facility where the final deposition of any amount of municipal solid waste occurs, whether or not mixed with or including other waste allowed under Subtitle D of the Federal Resource Conservation and Recovery Act of 1976, as amended, and includes, but is not limited to, incinerators and waste-to-energy facilities that burn municipal solid waste, and contained and residential landfills, but does not include a waste site or facility which is operated exclusively by a solid waste generator on property owned by the solid waste generator which accepts only industrial solid waste from the solid waste generator or industrial solid waste generated at another facility owned and operated by the generator or wholly-owned subsidiary, or a medical waste incinerator which is owned, operated, and located on the property of a hospital or university which is regulated by the cabinet and used for the purpose of treatment, prior to landfill, of medical waste received from the generator exclusively or in combination with medical waste generated by professionals or facilities licensed or regulated or operated by the Commonwealth;
- (16) "Municipal solid waste reduction" means source reduction, waste minimization, reuse, recycling, composting, and materials recovery;
- (17) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;
- (18) "Post-closure monitoring and maintenance" means the routine care, maintenance, and monitoring of a solid waste or hazardous waste treatment, storage, or disposal facility following closure of the facility;
- (19) "Publicly owned treatment works" means any device or system used in the treatment (including recycling and recovery) of municipal sewage or industrial wastes of a liquid nature which is owned by the Commonwealth or a political subdivision of the Commonwealth;
- (20) "Recovered material" means those materials, including but not limited to compost, which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing, but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis. ***Notwithstanding any provision of law to the contrary, tire-derived fuel, as defined in subsection (54) of this section, shall be considered a recovered material;***
- (21) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material, but does not mean a solid waste management facility if solid waste generated by a recovered material processing facility is managed pursuant to this chapter and administrative regulations adopted by the cabinet;
- (22) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products, including refuse-derived fuel when processed in accordance with administrative regulations established by the cabinet, but does not include the incineration or combustion of materials for the recovery of energy;
- (23) "Refuse-derived fuel" means a sized, processed fuel product derived from the extensive separation of municipal solid waste, which includes the extraction of recoverable materials for recycling and the removal of nonprocessables such as dirt and gravel prior to processing the balance of the municipal solid waste into the refuse-derived fuel product;
- (24) "Secretary" means the secretary of the Environmental and Public Protection Cabinet;

- (25) "Sewage system" means individually or collectively those constructions or devices used for collecting, pumping, treating, and disposing of liquid or waterborne sewage, industrial wastes, or other wastes;
- (26) "Termination" means the final actions taken by the cabinet as to a solid waste or hazardous waste treatment, storage, or disposal facility when formal responsibilities for post-closure monitoring and maintenance cease;
- (27) "Waste site or facility" means any place where waste is managed, processed, or disposed of by incineration, landfilling, or any other method, but does not include a container located on property where solid waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility, or the combustion of processed waste in a utility boiler;
- (28) "Storage" means the containment of wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such wastes;
- (29) "Transportation" means any off-site movement of waste by any mode, and any loading, unloading, or storage incidental thereto;
- (30) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;
- (31) "Waste" means:
 - (a) "Solid waste" means any garbage, refuse, sludge, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining wastes, coal mining by-products, refuse, and overburden), agricultural operations, and from community activities, but does not include those materials including, but not limited to, sand, soil, rock, gravel, or bridge debris extracted as part of a public road construction project funded wholly or in part with state funds, recovered material, *tire-derived fuel*, special wastes as designated by KRS 224.50-760, solid or dissolved material in domestic sewage, manure, crops, crop residue, or a combination thereof which are placed on the soil for return to the soil as fertilizers or soil conditioners, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923):
 - 1. "Household solid waste" means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunkhouses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and campgrounds, ***but it does not include tire-derived fuel***;
 - 2. "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other service and nonmanufacturing activities, excluding ***tire-derived fuel and*** household and industrial solid waste;
 - 3. "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste or a special waste as designated by KRS 224.50-760, including, but not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products, ***except tire-derived fuel***; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment; and
 - 4. "Municipal solid waste" means household solid waste and commercial solid waste; and
 - (b) "Hazardous waste" means any discarded material or material intended to be discarded or substance or combination of such substances intended to be discarded, in any form which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to

an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed;

- (32) "Waste management district" means any county or group of counties electing to form under the provisions of KRS Chapter 109 and operate in conformance with the provisions of KRS Chapter 109 and with Section 4006, Resource Conservation and Recovery Act of 1976, as amended (Public Law 94-580);
- (33) "Water" or "waters of the Commonwealth" means and includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction;
- (34) "Water pollution" means the alteration of the physical, thermal, chemical, biological, or radioactive properties of the waters of the Commonwealth in such a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life or marine life, to the use of such waters as present or future sources of public water supply or to the use of such waters for recreational, commercial, industrial, agricultural, or other legitimate purposes;
- (35) "Pollutant" means and includes dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, chemical, biological or radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, industrial, municipal or agricultural waste, and any substance resulting from the development, processing, or recovery of any natural resource which may be discharged into water;
- (36) "NPDES" means National Pollutant Discharge Elimination System;
- (37) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of waste during its transportation from the point of generation to the point of disposal, treatment, or storage;
- (38) "Open dump" means any facility or site for the disposal of solid waste which does not have a valid permit issued by the cabinet or does not meet the environmental performance standards established under regulations promulgated by the cabinet;
- (39) "Solid waste management" means the administration of solid waste activities: collection, storage, transportation, transfer, processing, treatment, and disposal, which shall be in accordance with a cabinet-approved county or multicounty solid waste management plan;
- (40) "Solid waste management area" or "area" means any geographical area established or designated by the cabinet in accordance with the provisions of this chapter;
- (41) "Solid waste management facility" means any facility for collection, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether such facility is associated with facilities generating such wastes or otherwise, but does not include a container located on property where solid waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility which is subject to regulation pursuant to the chapter for control of environmental impacts and to prevent any public nuisance;
- (42) "Hazardous constituent" shall conform to the requirements of the Resource Conservation and Recovery Act (RCRA), as amended;
- (43) "Land disposal" includes but is not limited to any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave;
- (44) "Key personnel" means an officer, partner, director, manager, or shareholder of five percent (5%) or more of stock or financial interest in a corporation, partnership, or association or parent, subsidiary, or affiliate corporation and its officers, directors, or shareholders of five percent (5%) or more of stock or financial interest;
- (45) "Universal collection" means a municipal solid waste collection system which is established by ordinance and approved by the cabinet and requires access for each household or solid waste generator in a county. A commercial or industrial entity which transports or contracts for the transport of the municipal solid waste it generates or which operates a solid waste management facility for its exclusive use may be excluded from participation;

- (46) "Governing body" means a county, a waste management district, an entity created pursuant to the Interlocal Cooperation Act, a taxing district created pursuant to the provisions of KRS 65.180 to 65.192, a special district created pursuant to the provisions of KRS 65.160 to 65.176, or counties acting under contract pursuant to KRS 109.082;
- (47) "Convenience center" means a facility that is manned during operating hours for the collection and subsequent transportation of municipal solid wastes;
- (48) "Transfer facility" means any transportation related facility including loading docks, parking areas, and other similar areas where shipments of solid waste are held or transferred during the normal course of transportation;
- (49) "Collection box" means an unmanned receptacle utilized to collect municipal solid waste;
- (50) "Newsprint" means that class or kind of paper chiefly used for printing newspapers and weighing more than twenty-four and one-half (24 1/2) pounds, but less than thirty-five (35) pounds for five hundred (500) sheets of paper two (2) feet by three (3) feet in size, on rolls that are not less than thirteen (13) inches wide and twenty-eight (28) inches in diameter and having a brightness of less than sixty (60);
- (51) "Postconsumer waste paper" means discarded paper after it has served its intended use by a publisher;
- (52) "Publisher" means a person engaged in the business of publishing newspapers, advertisement flyers, telephone books, and other printed material;~~[-and]~~
- (53) "Recycled content" means the proportion of fiber in newsprint that is derived from postconsumer waste paper;
and
- (54) ***"Tire-derived fuel" or "TDF" means a product made from waste tires to the exact specifications of a system designed to accept tire-derived fuel as a primary or supplemental fuel source, that have been reduced to particle sizes not greater than two (2) inches by two (2) inches and that is destined for transportation from the waste tire processor for use as a fuel. "Tire-derived fuel" shall not mean refuse-derived fuel.***

Section 2. KRS 224.50-856 is amended to read as follows:

- (1) No person shall engage in disposal of waste tires in Kentucky except by transfer to a permitted solid waste disposal facility and except as follows:
 - (a) ***1.*** If transferred to a contained landfill, the waste tires shall be processed to prevent the entrapment of air or water;
 - 2. ~~(b)~~*** If transferred to a residual landfill, the waste tires shall be rendered suitable for disposal in a landfill and the landfill shall accept only waste tires for disposal; or
 - 3. ~~(c)~~*** If transferred to an incinerator or to any facility for use as a fuel, the incinerator or other facility shall be permitted ***in accordance with KRS 224.20-110 and 224.40-310*** to allow the burning of waste tires and shall have received a local determination related to the waste tires in accordance with KRS 224.40-315(1); ***and***
 - (b) Facilities proposing to use tire-derived fuel, as that term is defined in subsection (54) of Section 1 of this Act, as a fuel or for other energy recovery, shall not be required to receive a local determination related to the tire-derived fuel use under KRS 224.40-315(1). The Division of Air Quality shall provide for public notice and an opportunity for comment on any application seeking approval for use of tire-derived fuel.***
- (2) No person shall accumulate more than twenty-five (25) waste tires in Kentucky at a time for processing, by baling, chopping, recycling, shredding, or other means of changing their shape, size, or chemical content without meeting the requirements of the waste tire program. For processing which had been approved by the cabinet before July 15, 1998, the person who had received the approval shall register within forty-five (45) days of July 15, 1998.
- (3) No person shall transport more than fifty (50) waste tires in Kentucky at a time, either in one (1) vehicle or more than one (1) vehicle managed by or operated under contract with that person, without meeting the requirements of the waste tire program, unless transported in accordance with subsection (5) of this section.

- (4) No person shall accumulate more than one hundred (100) waste tires in Kentucky at a time without meeting the requirements of the waste tire program, unless exempted by KRS 224.50-854 or accumulated in accordance with subsection (5) or (6) of this section. For accumulations of more than one hundred (100) tires not accumulated in accordance with subsection (5) or (6) of this section and existing on July 15, 1998, the person who has accumulated the tires shall register within forty-five (45) days of July 15, 1998.
- (5) A person making retail sales of new motor vehicle tires in Kentucky may accumulate up to one thousand (1,000) waste tires at the place where retail sales are made without registering as an accumulator as required by KRS 224.50-858, if the waste tires are stored in accordance with the requirements of KRS 224.50-860(3), (5), (6), (7), and (8), and stored on-site in a building, in an adjacent covered area, or closed container where public access is prohibited after business hours. The retailer may transport the waste tires it accumulates at the place where retail sales are made without registering as a transporter as required by KRS 224.50-858 if the waste tires will remain in the retailer's possession until they reach their destination.
- (6) An automotive recycling dealer in Kentucky who is licensed by the Transportation Cabinet pursuant to KRS 190.010 to 190.080 may accumulate up to one thousand (1,000) waste tires at the place where automotive recycling is done without registering as an accumulator as required by KRS 224.50-858 if the waste tires are stored in accordance with KRS 224.50-860(2) to (11) and stored on-site in a building, in an adjacent covered area, or closed container where public access is prohibited after business hours.

Approved March 21, 2007.

CHAPTER 31

(SB 185)

AN ACT relating to military affairs.

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

Section 1. KRS 36.025 is amended to read as follows:

- (1) The Governor, with the recommendation of the adjutant general, may appoint a deputy adjutant general ***for the Army National Guard and a deputy adjutant general for the Air National Guard***, who at the time of appointment shall be at least thirty (30) years of age and shall be serving as a commissioned officer in the Kentucky National Guard. The Governor shall issue a commission to ***each such***~~the~~ deputy adjutant general in the grade of brigadier general, provided such individual is qualified for federal recognition in that grade. The position of deputy adjutant general shall require full-time employment in the Department of Military Affairs.~~{ Such appointment shall be for tenure of office of the appointing authority. }~~ The deputy ***adjutants***~~adjutant~~ general shall be compensated at the base rate of pay, not including subsistence and quarters allowances as provided in KRS 38.205, or as prescribed in KRS 64.640.
- (2) The Governor, with the recommendation of the adjutant general, may appoint an assistant adjutant general for the Army National Guard and an assistant adjutant general for the Air National Guard, who at the time of appointment shall be at least thirty (30) years of age and shall be serving as a commissioned officer in the Kentucky National Guard. The Governor shall issue a commission to each such assistant adjutant general in the grade of brigadier general, provided such individual is qualified for federal recognition in that grade.~~{ Such appointment shall be for the tenure of office of the appointing authority. }~~ The assistant adjutants general may be compensated for all state service performed by them, as provided in KRS 38.205.

Approved March 21, 2007.

CHAPTER 32

(SB 187)

AN ACT relating to abandoned mine land.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

The cabinet may use amounts available in grants made annually to the Commonwealth under Section 2 of this Act for the reclamation of eligible land and water prioritized under subsection (3) of Section 3 of this Act. However, the expenditure shall not occur unless the reclamation is done in conjunction with the expenditure of funds for reclamation projects prioritized under subsections (1) and (2) of Section 3 of this Act, irrespective of when the higher priority project was initially funded.

Section 2. KRS 350.550 is amended to read as follows:

- (1) There is hereby created within the Commonwealth of Kentucky an Abandoned Mine Lands Program, to be administered within the Environmental and Public Protection Cabinet. The secretary of the Environmental and Public Protection Cabinet may promulgate regulations necessary to implement this program. The provisions of KRS 350.150, 350.152, 350.154, 350.156(1) and (2), 350.158, 350.161, and 350.163 shall not be applicable to this program.
- (2) The Finance and Administration Cabinet is hereby directed to establish a fund to be known as the Abandoned Mine Reclamation Fund (hereinafter referred to as the "fund").
- (3) The fund shall consist of amounts deposited in the fund from time to time, including but not limited to:
 - (a) The reclamation fees levied pursuant to Section 402 of P.L. 95-87 and allocated to the Commonwealth of Kentucky;
 - (b) Any income derived from or any user charge imposed on or for land reclaimed pursuant to the Abandoned Mine Lands Program after the expenses of the program have been deducted;
 - (c) Donations by persons, corporations, associations, governmental entities, and foundations for the purposes of the Abandoned Mine Lands Program;
 - (d) Interest credited to the fund pursuant to Section 401(e) of P.L. 95-87 and allocated to the Commonwealth of Kentucky; and
 - (e) All other moneys as provided for consistent with this chapter.
- (4) Moneys in the fund may be used for the following purposes:
 - (a) Reclamation and restoration of land and water resources adversely affected by past coal mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas, and abandoned coal refuse disposal areas; sealing and filling of abandoned deep mine entries and voids; planting of land adversely affected by past coal mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by coal mine drainage, including restoration of stream beds, and construction and operation of water treatment plants; prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ; and prevention, abatement, and control of coal mine subsidence;
 - (b) Acquisition and filling of voids and sealing of tunnels, shafts, and entryways;
 - (c) Acquisition of land as provided for in this chapter;
 - ~~(d) Studies by state agencies, by contract with public and private organizations to provide information, advice, and technical assistance, including research and demonstration projects, conducted for the purposes of this program;~~
 - ~~(e)~~ Restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining which constitute an emergency as provided for in this program;
 - ~~(e)~~~~(f)~~ Administrative expenses of the program to accomplish the purposes of this program;
 - ~~(f)~~~~(g)~~ For the purposes of Section 507(c) of P.L. 95-87; and
 - ~~(g)~~~~(h)~~ All other necessary expenses to accomplish the purposes of this program.

Section 3. KRS 350.555 is amended to read as follows:

Expenditure of moneys from the fund on lands and water eligible pursuant to KRS ~~350.560~~~~{350.565}~~ for the purposes of the Abandoned Mine Lands Program shall reflect the following priorities in the order stated:

- (1) (a) The protection of public health, safety, ~~general welfare,~~ and property from extreme danger of adverse effects of coal mining practices; **and**
 - (b) ***The restoration of land and water resources and the environment that have been degraded by the adverse effects of coal mining practices and which are situated adjacent to a site that has been or will be remediated under this subsection;***
- (2) (a) The protection of public health **and** ~~safety,~~ ~~and general welfare~~ from **the** adverse effects of coal mining practices; **and**
 - (b) ***The restoration of land and water resources and the environment that have been degraded by the adverse effects of coal mining practices and which are situated adjacent to a site that has been or will be remediated under this subsection; and***
- (3) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), and woodland resources, fish and wildlife, recreation resources, and economic productivity;
- ~~(4) Research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques;~~
- ~~(5) The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, and recreation and conservation facilities adversely affected by coal mining practices; and~~
- ~~(6) The development of publicly owned land adversely affected by coal mining practices, including land acquired for reclamation as provided in the Abandoned Mine Lands Program for recreation and historic purposes, conservation, and open space benefits].~~

Section 4. KRS 350.560 is amended to read as follows:

- (1) Lands and water eligible for reclamation or drainage abatement expenditures under the Abandoned Mine Lands Program are those which were mined for coal or which were affected by coal mining, wastebanks, coal processing, or other coal mining processes, and were abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under the provisions of this chapter. Surface coal mining operations on lands eligible for remining shall not affect the eligibility of those lands for reclamation and restoration under this chapter after the release of the bond or deposit for a remining operation as provided under KRS 350.093. In the event the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under this chapter may be used if the amount of the bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the cabinet shall immediately exercise its authority under KRS 350.585.
- (2) If the cabinet determines that the reclamation priority, under the priorities of KRS 350.555(1) and (2), of a site is the same or more urgent than the priority of sites under subsection (1) of this section, the following sites shall also be eligible for reclamation or drainage abatement expenditures:
 - (a) Unreclaimed sites which were mined for coal or which were affected by coal mining, waste banks, coal processing, or other mining processes and left in an inadequate reclamation status during the period beginning August 4, 1977, and ending May 18, 1982, for which the bond, or other form of financial guarantee, was insufficient to provide adequate reclamation or abatement of the site; or
 - (b) Unreclaimed sites which were mined for coal or which were affected by coal mining, waste banks, coal processing, or other coal mining processes and left in an inadequate reclamation status during the period beginning on August 4, 1977, and ending on or before November 5, 1990, where the surety for the permittee became insolvent during the period, and as of November 5, 1990, funds immediately available from proceedings relating to the insolvency, or from other sources have been insufficient to provide for adequate reclamation and abatement at the site.
- (3) Sites under subsection (2) in the immediate vicinity of a residential area or which have an adverse economic impact upon a local community shall be given priority.
- (4) ~~[Up to thirty percent (30%) of the]~~Funds allocated to the Commonwealth through annual grants from the Secretary of the Interior may be expended for the purposes of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices. If the adverse effect on water supplies referred to in this subsection occurred both prior to and after August 3, 1977, subsections (1) and (2), above,

shall not be construed to prohibit use of funds for the purposes of this subsection, if the adverse effects occurred predominantly prior to August 3, 1977.

- (5) Where the Governor has made a certification under KRS 350.553 and the Secretary of the Interior has concurred in the certification, the reclamation categories of KRS 350.553(2) shall take effect, supplanting the categories of subsections (1), (2), and (4) above.

Section 5. KRS 350.575 is amended to read as follows:

- (1) Within six (6) months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land, the cabinet shall itemize the moneys so expended and may file a statement thereof in the office of the county in which the land lies which has the responsibility under local law for the recording of judgments against land, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices if the moneys so expended shall result in a significant increase in property value. Such statement shall constitute a lien upon the said land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. No lien shall be filed against the property of any person, in accordance with this section, ~~who owned the surface prior to May 2, 1977, and~~ who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder. The cabinet may waive the lien consistent with its regulations.
- (2) The landowner may proceed as provided by local law to petition within sixty (60) days of the filing of the lien, to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by local law.
- (3) The lien provided in this section shall be entered in the county office in which the land lies and which has responsibility under local law for the recording of judgments against land. Such statement shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon said land.

Section 6. KRS 350.597 is amended to read as follows:

- (1) The Finance and Administration Cabinet shall establish a special trust fund which may receive and retain up to **thirty percent (30%)** ~~ten percent (10%)~~ of the total grants made annually by the Secretary of the Interior, pursuant to Section 402(g)(6) ~~and (7)~~ of **Pub. L. No. [P.L.] 95-87, as amended by the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432.**
- (2) Sums deposited into the special trust fund, and interest earned thereon, shall be expended ~~for either:~~
 - ~~(a) For the priorities stated in KRS 350.555 after September 30, 1995; or~~
 - ~~(b) For acid mine drainage abatement and treatment in accordance with the requirements of Section 402(g)(6) ~~(7)~~ of Pub. L. No. [P.L.] 95-87, as amended by the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432.~~

Approved March 21, 2007.

CHAPTER 33

(SB 69)

AN ACT relating to Medicaid.

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

Section 1. KRS 205.564 is amended to read as follows:

- (1) The Pharmacy and Therapeutics Advisory Committee is established and attached to the Department for Medicaid Services for administrative purposes.

- (2) The committee shall have **fifteen (15)**~~fourteen (14)~~ members, as follows:
- (a) **Thirteen (13)**~~Twelve (12)~~ voting members who shall be physicians currently participating in the Medicaid program who may legally prescribe a broad range of scheduled and nonscheduled drugs, as categorized by the U.S. Drug Enforcement Administration, or pharmacists who dispense prescriptions to Medicaid recipients, as follows:
 1. Three (3) licensed, practicing family practice physicians;
 2. Two (2) licensed, practicing physicians who are pediatricians;
 3. One (1) licensed, practicing physician who is an obstetrician/gynecologist or gynecologist;
 4. One (1) licensed, practicing internal medicine physician who is a primary care provider;
 5. One (1) licensed, practicing physician from any medical specialty;
 6. **Two (2) licensed, practicing physicians who are psychiatrists, one (1) who is a practicing psychiatrist in a community mental health center and one (1) from either the School of Medicine, University of Louisville or the College of Medicine, University of Kentucky**~~One (1) licensed, practicing physician who is a psychiatrist~~; and
 7. Three (3) licensed, practicing pharmacists; and
 - (b) Two (2) nonvoting members, as follows:
 1. The medical director of the department; and
 2. A representative of the department's pharmacy program, as designated by the commissioner.
- (3) One (1) voting committee member shall be appointed, and may be reappointed, by the Governor from a list of three (3) nominees received from the President of the Senate, and one (1) voting committee member shall be appointed, and may be reappointed, by the Governor from a list of three (3) nominees received from the Speaker of the House of Representatives. The remaining **eleven (11)**~~ten (10)~~ voting committee members shall be appointed, and may be reappointed, by the Governor from a list of nominees submitted by the department. Terms of the voting committee members shall be three (3) years with no members serving more than two (2) consecutive terms.
- (4) The Pharmacy and Therapeutics Advisory Committee shall:
- (a) Act in an advisory capacity to the Governor, the secretary of the Cabinet for Health and Family Services, and the Medicaid commissioner on the development and administration of an outpatient drug formulary;
 - (b) Perform drug reviews and make recommendations to the secretary regarding specific drugs or drug classes to be placed on prior authorization or otherwise restricted, as determined through a process established by the cabinet;
 - (c) Provide for an appeals process to be utilized by a person or entity that disagrees with recommendations of the committee;
 - (d) Establish bylaws or rules for the conduct of committee meetings; and
 - (e) Function in accordance with the Kentucky Open Meetings Law and the Kentucky Open Records Law.
- (5) Voting members of the committee shall elect a chair and vice chair by majority vote. A quorum shall consist of **eight (8)**~~seven (7)~~ voting members of the committee.
- (6) The committee shall meet every other month for a total of at least six (6) times per year or upon the call of the chair, the secretary of the Cabinet for Health and Family Services, or the Governor. The Department for Medicaid Services shall post the agenda on its Web site no later than fourteen (14) days prior to the date of a regularly scheduled meeting and no later than seventy-two (72) hours prior to the date of a specially called meeting. Options, including any recommendations, by the department for drug review or drug review placement shall be posted on the department's Web site no later than seven (7) days prior to the date of the next regularly scheduled meeting and as soon as practicable prior to the date of the next specially called meeting.
- (7) Members of the committee shall receive no compensation for service, but shall receive necessary and actual travel expenses associated with attending meetings.

- (8) Any recommendation of the committee to the secretary of the Cabinet for Health and Family Services shall be posted to the Web site of the Department for Medicaid Services within seven (7) days of the date of the meeting at which the recommendation was made.
- (9) A recommendation of the committee shall be submitted to the secretary for a final determination. If the secretary does not accept the recommendation of the committee, the secretary shall present the basis for the final determination at the next scheduled meeting of the committee. The secretary shall act on the committee's recommendation within thirty (30) days of the date that the recommendation was posted on the Web site.
- (10) Any interested party may request and may be permitted to make a presentation to the board on any item under consideration by the board. The Cabinet for Health and Family Services shall, by administrative regulation promulgated under KRS Chapter 13A, establish requirements for any presentation made to the board.
- (11) The secretary's final determination shall be posted on the Web site of the Department for Medicaid Services.
- (12) Any appeal from a decision of the secretary shall be made in accordance with KRS Chapter 13B, except that the time for filing an appeal shall be within thirty (30) days of the date of the posting of the secretary's final determination on the Web site of the Department for Medicaid Services.
- (13) The Cabinet for Health and Family Services shall promulgate an administrative regulation in accordance with KRS Chapter 13A to implement the provisions of this section.

Approved March 21, 2007.

CHAPTER 34

(SB 98)

AN ACT relating to the Medical Assistance Program.

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

Section 1. KRS 205.560 is amended to read as follows:

- (1) The scope of medical care for which the Cabinet for Health and Family Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section. Within the limitations of any appropriation therefor, the provision of complete upper and lower dentures to recipients of Medical Assistance Program benefits who have their teeth removed by a dentist resulting in the total absence of teeth shall be a mandatory class in the scope of medical care. Payment to a dentist of any Medical Assistance Program benefits for complete upper and lower dentures shall only be provided on the condition of a preauthorized agreement between an authorized representative of the Medical Assistance Program and the dentist prior to the removal of the teeth. The selection of another class or other classes of medical care shall be recommended by the council to the secretary for health and family services after taking into consideration, among other things, the amount of federal and state funds available, the most essential needs of recipients, and the meeting of such need on a basis insuring the greatest amount of medical care as defined in KRS 205.510 consonant with the funds available, including, but not limited to, the following categories, except where the aid is for the purpose of obtaining an abortion:
 - (a) Hospital care, including drugs, and medical supplies and services during any period of actual hospitalization;
 - (b) Nursing-home care, including medical supplies and services, and drugs during confinement therein on prescription of a physician, dentist, or podiatrist;
 - (c) Drugs, nursing care, medical supplies, and services during the time when a recipient is not in a hospital but is under treatment and on the prescription of a physician, dentist, or podiatrist. For purposes of this paragraph, drugs shall include those amino acid modified preparations and low-protein modified food products for the treatment of the following inherited metabolic diseases, if the amino acid modified preparations or low-protein modified food products are prescribed for therapeutic treatment and are administered under the direction of a physician, and are limited to the following conditions:
 - 1. Phenylketonuria;
 - 2. Hyperphenylalaninemia;

3. Tyrosinemia (types I, II, and III);
 4. Maple syrup urine disease;
 5. A-ketoacid dehydrogenase deficiency;
 6. Isovaleryl-CoA dehydrogenase deficiency;
 7. 3-methylcrotonyl-CoA carboxylase deficiency;
 8. 3-methylglutaconyl-CoA hydratase deficiency;
 9. 3-hydroxy-3-methylglutaryl-CoA lyase deficiency (HMG-CoA lyase deficiency);
 10. B-ketothiolase deficiency;
 11. Homocystinuria;
 12. Glutaric aciduria (types I and II);
 13. Lysinuric protein intolerance;
 14. Non-ketotic hyperglycinemia;
 15. Propionic acidemia;
 16. Gyrate atrophy;
 17. Hyperornithinemia/hyperammonemia/homocitrullinuria syndrome;
 18. Carbamoyl phosphate synthetase deficiency;
 19. Ornithine carbamoyl transferase deficiency;
 20. Citrullinemia;
 21. Arginosuccinic aciduria;
 22. Methylmalonic acidemia; and
 23. Argininemia;
- (d) Physician, podiatric, and dental services;
- (e) Optometric services for all age groups shall be limited to prescription services, services to frames and lenses, and diagnostic services provided by an optometrist, to the extent the optometrist is licensed to perform the services and to the extent the services are covered in the ophthalmologist portion of the physician's program. Eyeglasses shall be provided only to children under age twenty-one (21);
- (f) Drugs on the prescription of a physician used to prevent the rejection of transplanted organs if the patient is indigent;
- (g) Nonprofit neighborhood health organizations or clinics where some or all of the medical services are provided by licensed registered nurses or by advanced medical students presently enrolled in a medical school accredited by the Association of American Medical Colleges and where the students or licensed registered nurses are under the direct supervision of a licensed physician who rotates his services in this supervisory capacity between two (2) or more of the nonprofit neighborhood health organizations or clinics specified in this paragraph;
- (h) Services provided by health-care delivery networks as defined in KRS 216.900; and
- (i) Services provided by midlevel health-care practitioners as defined in KRS 216.900.
- (2) Payments for hospital care, nursing-home care, and drugs or other medical, ophthalmic, podiatric, and dental supplies shall be on bases which relate the amount of the payment to the cost of providing the services or supplies. It shall be one (1) of the functions of the council to make recommendations to the Cabinet for Health and Family Services with respect to the bases for payment. In determining the rates of reimbursement for long-term-care facilities participating in the Medical Assistance Program, the Cabinet for Health and Family Services shall, to the extent permitted by federal law, not allow the following items to be considered as a cost to the facility for purposes of reimbursement:

- (a) Motor vehicles that are not owned by the facility, including motor vehicles that are registered or owned by the facility but used primarily by the owner or family members thereof;
 - (b) The cost of motor vehicles, including vans or trucks, used for facility business shall be allowed up to fifteen thousand dollars (\$15,000) per facility, adjusted annually for inflation according to the increase in the consumer price index-u for the most recent twelve (12) month period, as determined by the United States Department of Labor. Medically equipped motor vehicles, vans, or trucks shall be exempt from the fifteen thousand dollar (\$15,000) limitation. Costs exceeding this limit shall not be reimbursable and shall be borne by the facility. Costs for additional motor vehicles, not to exceed a total of three (3) per facility, may be approved by the Cabinet for Health and Family Services if the facility demonstrates that each additional vehicle is necessary for the operation of the facility as required by regulations of the cabinet;
 - (c) Salaries paid to immediate family members of the owner or administrator, or both, of a facility, to the extent that services are not actually performed and are not a necessary function as required by regulation of the cabinet for the operation of the facility. The facility shall keep a record of all work actually performed by family members;
 - (d) The cost of contracts, loans, or other payments made by the facility to owners, administrators, or both, unless the payments are for services which would otherwise be necessary to the operation of the facility and the services are required by regulations of the Cabinet for Health and Family Services. Any other payments shall be deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health and Family Services. Interest paid to the facility for loans made to a third party may be used to offset allowable interest claimed by the facility;
 - (e) Private club memberships for owners or administrators, travel expenses for trips outside the state for owners or administrators, and other indirect payments made to the owner, unless the payments are deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health and Family Services; and
 - (f) Payments made to related organizations supplying the facility with goods or services shall be limited to the actual cost of the goods or services to the related organization, unless it can be demonstrated that no relationship between the facility and the supplier exists. A relationship shall be considered to exist when an individual, including brothers, sisters, father, mother, aunts, uncles, and in-laws, possesses a total of five percent (5%) or more of ownership equity in the facility and the supplying business. An exception to the relationship shall exist if fifty-one percent (51%) or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.
- (3) No vendor payment shall be made unless the class and type of medical care rendered and the cost basis therefor has first been designated by regulation.
 - (4) The rules and regulations of the Cabinet for Health and Family Services shall require that a written statement, including the required opinion of a physician, shall accompany any claim for reimbursement for induced premature births. This statement shall indicate the procedures used in providing the medical services.
 - (5) The range of medical care benefit standards provided and the quality and quantity standards and the methods for determining cost formulae for vendor payments within each category of public assistance and other recipients shall be uniform for the entire state, and shall be designated by regulation promulgated within the limitations established by the Social Security Act and federal regulations. It shall not be necessary that the amount of payments for units of services be uniform for the entire state but amounts may vary from county to county and from city to city, as well as among hospitals, based on the prevailing cost of medical care in each locale and other local economic and geographic conditions, except that insofar as allowed by applicable federal law and regulation, the maximum amounts reimbursable for similar services rendered by physicians within the same specialty of medical practice shall not vary according to the physician's place of residence or place of practice, as long as the place of practice is within the boundaries of the state.
 - (6) Nothing in this section shall be deemed to deprive a woman of all appropriate medical care necessary to prevent her physical death.
 - (7) To the extent permitted by federal law, no medical assistance recipient shall be recertified as qualifying for a level of long-term care below the recipient's current level, unless the recertification includes a physical

examination conducted by a physician licensed pursuant to KRS Chapter 311 or by an advanced registered nurse practitioner licensed pursuant to KRS Chapter 314 and acting under the physician's supervision.

- (8) If payments made to community mental health centers, established pursuant to KRS Chapter 210, for services provided to the mentally retarded exceed the actual cost of providing the service, the balance of the payments shall be used solely for the provision of other services to the mentally retarded through community mental health centers.
- (9) No long-term-care facility, as defined in KRS 216.510, providing inpatient care to recipients of medical assistance under Title XIX of the Social Security Act on July 15, 1986, shall deny admission of a person to a bed certified for reimbursement under the provisions of the Medical Assistance Program solely on the basis of the person's paying status as a Medicaid recipient. No person shall be removed or discharged from any facility solely because they became eligible for participation in the Medical Assistance Program, unless the facility can demonstrate the resident or the resident's responsible party was fully notified in writing that the resident was being admitted to a bed not certified for Medicaid reimbursement. No facility may decertify a bed occupied by a Medicaid recipient or may decertify a bed that is occupied by a resident who has made application for medical assistance.
- (10) Family-practice physicians practicing in geographic areas with no more than one (1) primary-care physician per five thousand (5,000) population, as reported by the United States Department of Health and Human Services, shall be reimbursed one hundred twenty-five percent (125%) of the standard reimbursement rate for physician services.
- (11) The Cabinet for Health and Family Services shall make payments under the Medical Assistance program for services which are within the lawful scope of practice of a chiropractor licensed pursuant to KRS Chapter 312, to the extent the Medical Assistance Program pays for the same services provided by a physician.
- (12) The Medical Assistance Program shall use the form and guidelines established pursuant to KRS 304.17A-545(5) for assessing the credentials of those applying for participation in the Medical Assistance Program, including those licensed and regulated under KRS Chapters 311, 312~~, 313~~, 314, 315, and 320, any facility required to be licensed pursuant to KRS Chapter 216B, and any other health care practitioner or facility as determined by the Department for Medicaid Services through an administrative regulation promulgated under KRS Chapter 13A.
- (13) ***Dentists licensed under KRS Chapter 313 shall be excluded from the requirements of subsection (12) of this section. The Department for Medicaid Services shall develop a specific form and establish guidelines for assessing the credentials of dentists applying for participation in the Medical Assistance Program.***

Approved March 21, 2007.

CHAPTER 35

(HB 273)

AN ACT relating to county law libraries.

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

Section 1. KRS 172.100 is amended to read as follows:

- (1) A county law library shall be established in each county seat and the fiscal court of each county shall designate sufficient room in the courthouse,~~{-or-}~~ in a building of good construction adjacent to the courthouse, ***in the local public library, or in a building where sessions of the District or Circuit Court are regularly held, or a combination of the foregoing***, where such library shall be located and where the books ***and materials*** of the library may be safely kept.
- (2) The books of the county law library shall consist of all volumes belonging to the state heretofore sent to the various county officials directed by law to receive such books, and all volumes hereafter sent to such library by the state, and all books now owned or hereafter acquired by the county for the library. The counties may ***provide on-line legal resources, and may*** acquire books, maps, or other articles for the library by purchase, gift or devise.

Section 2. KRS 172.200 is amended to read as follows:

- (1) Upon the adoption of this optional plan, in counties other than those containing a city of the first class or consolidated local government, the Circuit Judge shall appoint one (1) member of the county's bar, and the members of the county's bar shall, by majority vote, elect another of their number, which two (2) attorneys shall, with the county attorney of the county, constitute and be designated as "Trustees, County Law Library." In counties containing a city of the first class or consolidated local government, the Chief Circuit Judge shall appoint one (1) member of the county's bar; the members of the county's bar shall, by majority vote, elect another of their number; the fiscal court or consolidated local government pursuant to the provisions of KRS 67C.139 shall appoint one (1) member, and one (1) member shall be appointed by the Commonwealth's attorney, which four (4) attorneys shall, with the county attorney of the county, constitute and be designated as "Trustees, County Law Library" or in a county containing a consolidated local government, "Trustees,County Law Library," which shall be a combination of the names of the largest city in existence on the date of the approval of the consolidated local government and the county.
- (2) The trustees shall serve for a term of two (2) years or until their successors are elected or qualified.
- (3) The trustees shall be in charge of the county law library, and they shall make purchases of the various state and federal case reports, textbooks, legal encyclopedia, and all other books usually incident to or customarily found in law libraries, or necessary to the protection of the rights of litigants, and they shall cause same to be properly arranged in the county law library, directing the ex officio librarian in the exercise of his duties. ***The trustees may also provide on-line legal resources for the use of library patrons.***
- (4) The trustees shall exercise their absolute discretion in the purchase of books, pamphlets, periodicals, and other materials, and in the appointment and compensation of personnel to assist the ex officio librarian in the handling of materials and in the maintenance of the library, but the trustees shall not contract for any such purchases and appointments so as to create an indebtedness greater than the anticipated revenue for the following eighteen (18) months, the anticipated revenue being based upon the preceding eighteen (18) months' revenue, and any indebtedness of the county law library fund shall not be considered in any way an indebtedness of the county, but shall be an indebtedness of the county law library fund only, and all creditors must look only to the county law library fund for satisfaction of their indebtedness.
- (5) The trustees shall designate one (1) of their number as treasurer and he shall be accountable for the receipt, deposit, and disbursement of all sums received for the operation of the county law library. He shall be bonded by a corporate bond, the cost of which shall be paid out of the receipts of the library fund. He shall deposit all sums received by him as treasurer in a regular banking depository, and he shall pay for all purchases made by the trustees by check or draft, keeping a true and accurate account of all sums received and expended by him. He shall annually file a written report with the Circuit Judge of the county showing all sums received by him, together with the court from which they were received, and an itemized statement of all expenditures made by him. The treasurer shall turn all funds over to his successor, together with a full inventory of the county law library, and together with a full and complete itemized statement of all outstanding accounts.

Approved March 21, 2007.

CHAPTER 36

(HB 32)

AN ACT relating to a student's license or permit to operate a motor vehicle.

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

Section 1. KRS 159.051 is amended to read as follows:

- (1) When a student age sixteen (16) or seventeen (17) drops out of school or is declared to be academically deficient, the school administrator or his designee shall notify the superintendent of schools of the district in which the student is a resident or is enrolled. The reports shall be made at the end of each semester but may be made earlier in the semester for accumulated absences. A student shall be deemed to have dropped out of school when he has nine (9) or more unexcused absences in the preceding semester. Any absences due to suspension shall be unexcused absences. A student shall be deemed to be academically deficient when he has not received passing grades in at least four (4) courses, or the equivalent of four (4) courses, in the preceding semester. The local school board shall adopt a policy to reflect a similar standard for academic deficiency for students in alternative, special education, or part-time programs.

- (2) Within ten (10) days after receiving the notification, the superintendent shall report the student's name and Social Security number to the Transportation Cabinet. As soon as possible thereafter, the cabinet shall notify the student that his operator's license, *intermediate license*, permit, or privilege to operate a motor vehicle has been revoked or denied and shall inform the student of his right to a hearing before the District Court of appropriate venue to show cause as to the reasons his ~~driver's~~ license, *permit, or privilege* should be reinstated. Within fifteen (15) days after this notice is sent, the custodial parent, legal guardian, or next friend of the student may request an ex parte hearing before the District Court. The student shall not be charged District Court filing fees. The notification shall inform the student that he is not required to have legal counsel. ~~{ Revocation under this subsection shall not be permitted unless the local school district shall operate an alternative education program approved by the Department of Education designed to meet the learning needs of students who are unable to succeed in the regular program. }~~
- (3) In order for the student to have his license reinstated, the court shall be satisfied that the license is needed to meet family obligations or family economic considerations which if unsatisfied would create an undue hardship or that the student is the only licensed driver in the household or the student is not considered a dropout or academically deficient pursuant to this section. If the student satisfies the court, the court shall notify the cabinet to reinstate the student's license at no cost. The student, if aggrieved by a decision of the court issued pursuant to this section, may appeal the decision within thirty (30) days to the Circuit Court of appropriate venue. A student who is being schooled at home shall be considered to be enrolled in school.
- (4) A student who has had his license revoked under the provisions of this section may reapply for his driver's license as early as the end of the semester during which he enrolls in school and successfully completes the educational requirements. A student may also reapply for his driver's license at the end of a summer school semester which results in the student having passed at least four (4) courses, or the equivalent of four (4) courses, during the successive spring and summer semesters, and the courses meet the educational requirements for graduation. He shall provide proof issued by his school within the preceding sixty (60) days that he is enrolled and is not academically deficient.

Section 2. KRS 186.470 is amended to read as follows:

- (1) The application of any minor under the age of eighteen (18) for an operator's license, motorcycle operator's license, intermediate license, or any instruction permit shall not be granted unless the application is signed by a parent or legal guardian of the applicant. Regardless of which parent signs the application, both parents shall be responsible as provided in KRS 186.590. If the minor does not have a father, mother, or guardian, an operator's license, intermediate license, or instruction permit shall not be granted to the minor unless his application is signed by a person willing to assume the obligation imposed by KRS 186.590 upon a person signing the application of a minor. A signature shall not be required in the case of the renewal of a minor's license but the signature on the original application shall continue to make the parent, guardian, or other person liable under the provisions of KRS 186.590 on all renewals of the minor's license until he reaches the age of eighteen (18) unless the license, or any renewal thereof, is canceled as provided in subsection (3)~~(2)~~ of this section.
- (2) ***The application shall include parental consent for the receipt and release of the information as set forth in Section 1 of this Act regarding the attendance and academic requirements for a minor to acquire and keep an operator's license, intermediate license, instructional permit, or privilege to operate a motor vehicle.***
- (3) A parent or a guardian of a minor applicant may file with the cabinet a verified written request that the license of the minor be canceled. Thereupon the license of the minor shall be canceled and the person who signed the application shall be relieved as to subsequent acts of the minor from the liability imposed by subsection (1) of KRS 186.590.
- ~~(4)(3)~~ The cabinet upon receipt of satisfactory evidence of the death of the person who signed the application of a minor for a license shall have the license canceled and no new license shall be issued to the minor until a new application, signed and verified, is made as required by this section.

Approved March 21, 2007.

CHAPTER 37**(SB 74)**

AN ACT relating to local government.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 147A IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly finds that the work of ConnectKentucky in the deployment and adoption of broadband services and information technology across the state has resulted in enhanced economic development and public safety for Kentucky communities, improved health care and educational opportunities, and a better quality of life for Kentucky citizens. Further, continued progress in the deployment and adoption of broadband services is vital to ensuring that Kentucky remains competitive and continues to create business and job growth. The General Assembly finds that Kentucky must encourage and support the partnership of the public and private sectors in the continued growth of telecommunications and information technology for Kentucky citizens and businesses.*
- (2) *The Department for Local Government shall:*
 - (a) *Track the deployment and adoption of broadband and information technology in Kentucky;*
 - (b) *Enable public-private partnerships among broadband providers and relevant government entities to encourage the deployment and adoption of advanced broadband services;*
 - (c) *Serve as a resource for all citizens, broadband providers, and technology businesses regarding broadband and information technology issues;*
 - (d) *Report progress on deployment and adoption to the Legislative Research Commission upon request and at least annually; and*
 - (e) *Ensure notification to the public of the availability of public funds for broadband and information technology investments prior to awarding any contracts or grants.*
- (3) *The Department for Local Government may contract with a nonprofit organization to accomplish the objectives set forth in this section. The organization shall have an established competency in working with public and private sectors to accomplish wide-scale deployment and adoption of broadband and information technology.*
- (4) *Nothing herein shall be construed as giving the Department for Local Government any authority, regulatory or otherwise, over providers of telecommunications and information technology.*

Section 2. KRS 147A.021 is amended to read as follows:

- (1) The Department for Local Government shall have the following powers and duties:
 - (a) To require any reports from local governments that will enable it adequately to provide the technical and advisory assistance authorized by this section.
 - (b) To encourage, conduct, or participate in training courses in procedures and practices for the benefit of local officials, and in connection therewith, to cooperate with associations of public officials, business and professional organizations, university faculties, or other specialists.
 - (c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government to enable the department to carry out its duties under this section.
 - (d) At its discretion, to compile and publish annually a report on local government.
- (2) The Department for Local Government shall coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, the following programs:
 - (a) Demonstration cities and metropolitan development act as amended with the exception of Title I of the Housing and Community Development Act of 1974 as amended through 1981;

- (b) Farmers Home Administration;
- (c) Veterans Administration Act as amended, as it pertains to housing.
- (3) The Department for Local Government shall provide technical assistance and information to units of local government, including but not limited to:
 - (a) Personnel administration;
 - (b) Ordinances and codes;
 - (c) Community development;
 - (d) Appalachian Regional Development Program;
 - (e) Economic Development Administration Program;
 - (f) Intergovernmental Personnel Act Program;
 - (g) Land and Water Conservation Fund Program;
 - (h) Area Development Fund Program;
 - (i) Gas System Restoration Project;
 - (j) Joint Funding Administration Program;
 - (k) State clearinghouse for A-95 review;
 - (l) The memorandums of agreement with the area development districts to provide management assistance to local governments; and
 - (m) The urban development office.
- (4) The Department for Local Government shall exercise all of the functions of the state local finance officer provided in KRS Chapters 66, 68, and 131 relating to the control of funds of counties, cities, and other units of local government.
- (5) Upon request of the Administrative Office of the Courts, the Department for Local Government shall evaluate the financial condition of any local unit of government selected to participate in a court facilities construction or renovation project under KRS 26A.160 and shall certify to the Administrative Office of the Courts the local unit of government's ability to participate in the project.
- (6) *The Department for Local Government shall encourage broadband and information technology deployment and adoption throughout Kentucky in accordance with Section 1 of this Act.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

If ad valorem taxes have been collected under the provisions of KRS 75.015 or 75.040 when no taxes were due for the tax year beginning on January 1, 2005, moneys not refunded after the two (2) year period set out under the provisions of KRS 134.590 shall not be considered unclaimed property of the state and may be expended by the fire district board of trustees.

Approved March 21, 2007.

CHAPTER 38

(SB 68)

AN ACT relating to crimes and punishments.

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

Section 1. KRS 304.39-080 is amended to read as follows:

- (1) "Security covering the vehicle" is the insurance or other security so provided. The vehicle for which the security is so provided is the "secured vehicle."
- (2) "Basic reparation insurance" includes a contract, self-insurance, or other legal means under which the obligation to pay basic reparation benefits arises.

- (3) This Commonwealth, its political subdivisions, municipal corporations, and public agencies may continuously provide, pursuant to subsection (6), security for the payment of basic reparation benefits in accordance with this subtitle for injury arising from maintenance or use of motor vehicles owned by those entities and operated with their permission.
- (4) The United States and its public agencies and any other state, its political subdivisions, municipal corporation, and public agencies may provide, pursuant to subsection (6), security for the payment of basic reparation benefits in accordance with this subtitle for injury arising from maintenance or use of motor vehicles owned by those entities and operated with their permission.
- (5) Except for entities described in subsections (3) and (4), every owner **or operator** of a motor vehicle registered in this Commonwealth or operated in this Commonwealth ~~by him or~~ with **an owner's** ~~his~~ permission shall continuously provide with respect to the motor vehicle while it is either present or registered in this Commonwealth, and any other person may provide with respect to any motor vehicle, by a contract of insurance or by qualifying as a self-insurer, security for the payment of basic reparation benefits in accordance with this subtitle and security for payment of tort liabilities, arising from maintenance or use of the motor vehicle. The owner of a motor vehicle who fails to maintain security on a motor vehicle in accordance with this subsection shall have his or her motor vehicle registration revoked in accordance with KRS 186A.040 and shall be subject to the penalties in KRS 304.99-060. An owner who permits another person to operate a motor vehicle without security on the motor vehicle as required by this subtitle shall be subject to the penalties in KRS 304.99-060.
- (6) Security may be provided by a contract of insurance or by qualifying as a self-insurer or obligated government in compliance with this subtitle.
- (7) Self-insurance, subject to approval of the executive director of insurance, is effected by filing with the executive director in satisfactory form:
 - (a) A continuing undertaking by the owner or other appropriate person to pay tort liabilities or basic reparation benefits, or both, and to perform all other obligations imposed by this subtitle;
 - (b) Evidence that appropriate provision exists for prompt and efficient administration of all claims, benefits, and obligations provided by this subtitle; and
 - (c) Evidence that reliable financial arrangements, deposits, or commitments exist providing assurance, substantially equivalent to that afforded by a policy of insurance, complying with this subtitle, for payment of tort liabilities, basic reparation benefits, and all other obligations imposed by this subtitle.
- (8) An entity described in subsection (3) or (4) may provide security by lawfully obligating itself to pay basic reparation benefits in accordance with this subtitle. ~~and~~
- (9) A person providing security pursuant to subsection (7) is a "self-insurer." An entity described in subsections (3) or (4) that has provided security pursuant to subsection (6) is an "obligated government."

Approved March 21, 2007.

CHAPTER 39

(HB 390)

AN ACT relating to special Gold Star Mothers license plates.

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

Section 1. KRS 186.162 is amended to read as follows:

- (1) As used in this section and in KRS 186.043, 186.164, 186.166, and 186.174:
 - (a) "Special license plate" means a unique license plate issued under this chapter to a group or organization that readily identifies the operator of the motor vehicle or motorcycle bearing the plate as a member of a group or organization, or a supporter of the work, goals, or mission of a group or organization. The term shall not include regular license plates issued under KRS 186.240;

- (b) "Street rod" means a modernized private passenger motor vehicle manufactured prior to the year 1949, or designed or manufactured to resemble a vehicle manufactured prior to 1949;
 - (c) "SF" means the portion of an initial or renewal fee to obtain a special license plate that is dedicated for use by the Transportation Cabinet;
 - (d) "CF" means the portion of an initial or renewal fee to obtain a special license plate that is dedicated for use by a county clerk; and
 - (e) "EF" means the portion of an initial or renewal fee to obtain a special license plate that is mandated by this chapter to be dedicated for use by a particular group or organization.
- (2) The initial purchase fee and renewal fee for a special license plate created under this chapter shall be as established in this subsection and includes the name of group or organization and the total initial and renewal fee required for the plate. The amount in parentheses indicates how the total fee is required to be divided:
- (a) Disabled veterans who receive assistance to purchase a vehicle from the United States Veterans' Administration and recipients of the Congressional Medal of Honor:
 - 1. Initial Fee: \$0 (\$0 SF/\$0 CF/\$0 EF).
 - 2. Renewal Fee:\$0 (\$0 SF/\$0 CF/\$0 EF).
 - (b) Former prisoners of war and survivors of Pearl Harbor:
 - 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - 2. Renewal Fee:\$3 (\$0 SF/\$3 CF/\$0 EF).
 - (c) Members of the Kentucky National Guard:
 - 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - 2. Renewal Fee:\$8 (\$0 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - (d) Recipients of the Purple Heart; members of the Civil Air Patrol; active, retired, veteran, reserve, or auxiliary members of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; Merchant Marines who served between December 7, 1941, and August 15, 1945; and disabled veterans who have been declared to be at least seventy percent (70%) service-connected disabled by the United States Department of Veterans' Affairs, or who receive total service-connected disability rating for compensation on individual unemployability and have not received assistance from the United States Department of Veterans' Affairs toward the purchase of a motor vehicle:
 - 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - (e) Recipients of the Distinguished Service Cross, Navy Cross, or Air Force Cross:
 - 1. Initial Fee: \$3 (\$0 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$3 (\$0 SF/\$3 CF/\$0 EF).
 - (f) Disabled license plates:
 - 1. Initial Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
 - (g) Historic vehicles:
 - 1. Initial Fee for two plates: \$53 (\$50 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee: Do not renew annually.
 - (h) Members of Congress:

1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (i) Volunteer firefighters:
1. Initial Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (j) Emergency management:
1. Initial Fee: \$28 (\$25 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (k) Fraternal Order of Police:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (l) Law Enforcement Memorial:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
- (m) Personalized plates:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$40 (\$37 SF/\$3 CF/\$0 EF).
- (n) Street rods:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (o) Nature plates:
1. Initial Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).
- (p) Amateur radio:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (q) Kentucky General Assembly:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (r) Kentucky Court of Justice:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$8 (\$0 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (s) Masons:

1. Initial Fee: \$28 (\$25 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (t) Collegiate plates:
1. Initial Fee: \$50 (\$37 SF/\$3 CF/\$10 EF to the general scholarship fund of the university whose name will be borne on the plate).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the general scholarship fund of the university whose name will be borne on the plate).
- (u) Independent Colleges:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Association of Independent Kentucky Colleges and Universities for distribution to the general scholarship funds of the Association's members).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the Association of Independent Kentucky Colleges and Universities for distribution to the general scholarship funds of the Association's members).
- (v) Child Victims:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the child victims' trust fund established under KRS 41.400).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the child victims' trust fund established under KRS 41.400).
- (w) Kentucky Horse Council:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Kentucky Horse Council).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the Kentucky Horse Council).
- (x) Ducks Unlimited:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to Kentucky Ducks Unlimited).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Ducks Unlimited).
- (y) Spay neuter:
1. Initial Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to the animal control and care fund established under KRS 258.119).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the animal control and care fund established under KRS 258.119).
- (z) Gold Star Mothers:
1. Initial Fee: ~~\$0/\$15~~ ~~\$0/(\$12)~~ SF/~~\$0/\$3~~ CF/ \$0 EF).
 2. Renewal Fee:~~\$0/\$15~~ ~~\$0/(\$12)~~ SF/~~\$0/\$3~~ CF/ \$0 EF).
- (3) Any special license plate may be combined with a personalized license plate for a twenty-five dollar (\$25) state fee in addition to all other fees for the particular special license plate established in this section and in KRS 186.164(3). The twenty-five dollar (\$25) fee required under this subsection shall be divided between the cabinet and the county clerk of the county where the applicant is applying for the license plate with the cabinet receiving twenty dollars (\$20) and the county clerk receiving five dollars (\$5).
- (4) Owners and lessees of motorcycles registered under KRS 186.050(2) may be eligible to receive special license plates issued under this section or established under the provisions of KRS 186.164 after the cabinet has received three hundred (300) applications and initial state fees from the sponsoring organization. Applicants for a special license plate for a motorcycle shall be required to pay the fee for a special plate as prescribed in this section or in KRS 186.164. The fee paid for the special plate for a motorcycle shall be in lieu of the registration fee required under KRS 186.050(2).

Section 2. KRS 186.041 is amended to read as follows:

- (1) Each initial and renewal application by a person who meets the criteria of paragraph (a) of this section and each initial application by a person who meets the criteria of paragraphs (b) and (c) of this section for a special military license plate shall be accompanied by proof that the person is associated with the United States Army, United States Navy, United States Air Force, United States Marine Corps, United States Coast Guard, United States Coast Guard Auxiliary, Kentucky National Guard, Merchant Marines with service between December 7, 1941, and August 15, 1945, or Civil Air Patrol in one (1) of the following ways:
 - (a) An active component member;
 - (b) A retired member; or
 - (c) A veteran who received a discharge under honorable conditions, or the veteran's widow and:
 1. Performed twenty-four (24) months of active-duty service;
 2. Received an early release due to injuries or other medical condition, or at the convenience of the service;
 3. Received a hardship discharge;
 4. Was separated or retired due to a disability; or
 5. Was determined to have a service-connected disability incurred during the enlistment.
- (2) The member, retired member, veteran, or reservist may purchase two (2) special military-related license plates annually for vehicles they own or lease. A disabled veterans license plate shall expire on July 31.
- (3) A recipient of the Distinguished Service Cross, Navy Cross, or Air Force Cross shall be eligible for a Service Cross license plate upon submission of an application to the Kentucky Department of Veterans' Affairs. The recipient shall be required to include with the initial application for a Service Cross license plate a copy of the general order that authorized the award and the recipient's Department of Defense form number 214. The Department of Veterans' Affairs shall verify the documentation submitted with the application for a Service Cross license plate, and if the individual applying for the plate is confirmed to be a recipient of the Distinguished Service Cross, Navy Cross, or Air Force Cross, the Department of Veterans' Affairs shall submit the applicant's name to the Transportation Cabinet's Division of Motor Vehicle Licensing not later than September 1 preceding the year that the Service Cross license plate is to be initially issued or renewed. When the Service Cross license plate is ready, the plate shall be sent to the county clerk in the county of the applicant's residence. The Transportation Cabinet's Division of Motor Vehicle Licensing shall inform each applicant in writing that the Service Cross license plate is ready and may be picked up at the county clerk's office. The Transportation Cabinet shall prescribe the type of application form required by this subsection and shall supply the Department of Veterans' Affairs with the application form required by this subsection.
- (4) A person who is a former prisoner of the enemy during World War I, World War II, the Korean War, or the Vietnam War, or the spouse of a deceased former prisoner of war, shall be eligible for a former prisoner of war license plate by submitting written proof from the United States Department of Veterans Affairs or other appropriate federal agency stating the period of time the person or person's spouse was a prisoner of war. If a former prisoner of war dies with a vehicle licensed as authorized under this section, the person's surviving spouse may retain the license plate for use on the same vehicle or on another vehicle that complies with KRS 186.164(7).
- (5) A person who is certified by the Kentucky chapter of the Pearl Harbor Survivors Association as being a survivor of the attack on Pearl Harbor shall be eligible for a Pearl Harbor license plate and shall be required to attach to the special military-related license plate application written evidence from the Kentucky chapter of the Pearl Harbor Survivors Association that the person:
 - (a) Was a member of the United States Armed Forces on December 7, 1941;
 - (b) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m., Hawaii time, at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three (3) miles;
 - (c) Was discharged honorably from the United States Armed Forces; and
 - (d) Is certified by the Kentucky chapter of the Pearl Harbor Survivors Association.

- (6) *A person who is eligible to receive a Gold Star Mothers license plate under KRS 186.164(15)(a) may receive up to two (2) Gold Star Mothers license plates annually for vehicles she owns or leases.*

Approved March 21, 2007.

CHAPTER 40

(HB 215)

AN ACT relating to motor vehicle special license plates.

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

Section 1. KRS 186.164 is amended to read as follows:

- (1) The SF portion of the fee required under KRS 186.162 shall include the fee to reflectorize all license plates under KRS 186.240. All EF fees required under KRS 186.162 shall be collected at the time of an initial or renewal application by the county clerk who shall forward the EF fee to the cabinet. The cabinet shall remit EF fees to the group or organization identified in KRS 186.162 on a quarterly basis. The cabinet may retain any investment income earned from holding EF fees designated to be remitted under this subsection to offset administrative costs incurred by the cabinet in the administration of EF fees.
- (2) A special license plate shall be the color and design selected by the group or organization identified in subsection (13) of this section, contingent upon the approval of the Transportation Cabinet. In addition to the design selected for a special license plate, the name "Kentucky," an annual renewal decal, and any combination of letters or numerals required by the cabinet in the design shall also appear on the plate.
- (3) Except as provided in KRS 186.162, the total initial fee for a special license plate created under this chapter shall be twenty-eight dollars (\$28), of which the Transportation Cabinet shall receive twenty-five dollars (\$25) and the county clerk shall receive three dollars (\$3), and the total renewal fee shall be fifteen dollars (\$15), of which the Transportation Cabinet shall receive twelve dollars (\$12) and the county clerk shall receive three dollars (\$3). The twenty-five dollar (\$25) initial fee and twelve dollar (\$12) renewal fee received by the Transportation Cabinet under this subsection shall include an applicant's registration fee required under KRS 186.050.
- (4) An actual metal special license plate shall be issued on the same schedule as regular license plates are issued under KRS 186.240. The cabinet shall have the discretion to extend the time period that will exist between the date a metal special license plate is issued and the date that regular plates are issued under KRS 186.240. A renewal registration decal shall be issued all other years during the owner's or lessee's birth month, except as provided in KRS 186.041(2), 186.042(5), and 186.174(2). A person seeking a special license plate for a vehicle provided as part of the person's occupation shall conform to the requirements of KRS 186.050(14).
- (5)
 - (a) If a special license plate issued under this chapter deteriorates to the point that the lettering, numbering, or images on the face of the plate are not legible, the plate shall be replaced free of charge, if the owner or lessee has not transferred the vehicle to which the plate was issued during the current licensing period.
 - (b) If a special license plate issued under this chapter is lost, stolen, or damaged in an accident, the county clerk shall issue a new plate upon payment of a three dollar (\$3) county clerk fee, if the owner or lessee has not transferred the vehicle to which the plate was issued during the current licensing period.
- (6) Upon the sale, transfer, or termination of a lease of a vehicle with any special license plate issued under this chapter, the owner or lessee shall remove the special plate and return it and the certificate of registration to the county clerk. The county clerk shall reissue the owner or lessee a regular license plate and a certificate of registration upon payment of a three dollar (\$3) county clerk fee. If the owner or lessee requests, the county clerk shall reissue the special plate upon payment of a three dollar (\$3) county clerk fee for use on any other vehicle of the same classification and category owned, **leased, or acquired** by the person during the current licensing period. If the owner or lessee has the special plate reissued to ~~a[another]~~ vehicle **which has been previously registered in this state**, the regular license plate that is being replaced shall be returned to the county clerk who shall forward the plate to the Transportation Cabinet.
- (7) A special license plate may be issued to the owner or lessee of a motor vehicle that is required to be registered under KRS 186.050(1), (3)(a), or (4)(a), except a special license plate shall not be issued to a taxicab, airport

limousine, or U-Drive-It registered and licensed under this chapter or KRS Chapter 281. A person applying for a special license plate shall apply in the office of the county clerk in the county of the person's residence, except as provided in KRS 186.168(3). All special license plates issued under this chapter may be combined with a personalized license plate under the provisions of KRS 186.174. The fee to combine a special license plate with a personalized license plate shall be as established in KRS 186.162(3).

- (8) Within thirty (30) days of termination from election to, appointment to, or membership with any group or organization, an applicant to whom a special license plate was issued under this chapter shall return the special license plate to the county clerk of the county of his or her residence, unless the person is merely changing his or her status with the group or organization to retired.
- (9) A group wanting to create a special license plate that is not authorized under this chapter on June 20, 2005, shall comply with the following conditions before being eligible to apply for a special license plate:
 - (a) The group shall be nonprofit and based, headquartered, or have a chapter in Kentucky;
 - (b) The group may be organized for, but shall not be restricted to, social, civic, or entertainment purposes;
 - (c) The group, or the group's lettering, logo, image, or message to be placed on the license plate, if created, shall not discriminate against any race, color, religion, sex, or national origin, and shall not be construed, as determined by the cabinet, as an attempt to victimize or intimidate any person due to the person's race, color, religion, sex, or national origin;
 - (d) The group shall not be a political party and shall not have been created primarily to promote a specific political belief;
 - (e) The group shall not have as its primary purpose the promotion of any specific faith, religion, or antireligion;
 - (f) The name of the group shall not be the name of a special product or brand name, and shall not be construed, as determined by the cabinet, as promoting a product or brand name; and
 - (g) The group's lettering, logo, image, or message to be placed on the license plate, if created, shall not be obscene, as determined by the cabinet.
- (10) If the cabinet denies to issue a group a special license plate based upon the conditions specified in subsection (9) of this section, the group may appeal the denial to the next regularly scheduled session of the General Assembly for review of the denial and action on the group's request for a special license plate. The cabinet shall, immediately upon denying to issue a group a special license plate, notify in writing the chairperson of both the House and Senate Transportation Committees of the General Assembly of the denial and the reasons upon which the cabinet based the denial. The House and Senate chairpersons shall be required to present the information to his or her respective committee for consideration within the first ten (10) days of the next regularly scheduled session of the General Assembly, if requested to do so in writing by the group who was denied a special license plate. A person seeking a personalized license plate under KRS 186.174 shall be subject to the conditions specified in subsection (9)(c) to (g) of this section.
- (11) If the cabinet approves a request for a special license plate, the cabinet shall begin designing and printing the plate after the group collects a minimum of nine hundred (900) applications with each application being accompanied by a twenty-five dollar (\$25) state fee. The applications and accompanying fee shall be submitted to the cabinet at one (1) time as a whole and shall not be submitted individually or intermittently.
- (12) An initial applicant for, or an applicant renewing, his or her registration for a special license plate may, at the time of application, make a voluntary contribution that the county clerk shall forward to the cabinet. The entity that sponsors a special plate established by the process outlined in this section may set a requested donation amount, not to exceed ten dollars (\$10), that will automatically be added to the cost of registration or renewal, unless the individual registering or renewing the vehicle registration opts out of contributing that recommended amount. The cabinet shall, on an annual basis, remit the voluntary contributions to the appropriate group identified to be used for the declared purpose stated under subsection (13) of this section. The cabinet may retain any investment income earned from holding voluntary contributions designated to be remitted under this subsection to offset administrative costs incurred by the cabinet in the administration of the contributions. Any group or organization that receives a mandatory EF fee under KRS 186.162 shall submit the information required under subsection (13)(a) and (c) of this section to the Transportation Cabinet within thirty (30) days of June 20, 2005.

- (13) If a group wants to receive a donation when the group or organization's special license plate is initially purchased or renewed under subsection (12) of this section, the group shall, at the time the nine hundred (900) applications are submitted to the Transportation Cabinet, also submit a notarized affidavit to the cabinet attesting to:
- (a) The name, address, and telephone number for the group or organization. If the group or organization does not have its headquarters in the Commonwealth, then the name, address, and telephone number for the group or organization's Kentucky state chapter shall be required. The names of the officers of the group or organization shall also be required. If the entity receiving funds under subsection (12) of this section is not a state governmental agency, a program unit within a state governmental agency, or is a group or organization that does not have a statewide chapter, then an extra donation for use by the group or organization shall be prohibited;
 - (b) The amount of the monetary donation the group wants to receive when a person purchases the group or organization's special license plate; and
 - (c) The purpose for which the donated funds will be used by the group or organization. Donated funds shall not be limited for use by members of the group or organization, and shall not be used for administrative or personnel costs of the group or organization.
- (14) All funds received by a group or organization under subsection (12) of this section shall be deposited into an account separate from all other accounts the group or organization may have, and the account shall be audited yearly at the expense of the group or organization. The completed audit shall be forwarded to the Transportation Cabinet in Frankfort. One hundred percent (100%) of the funds received by a group or organization under subsection (12) of this section shall be used for the express purpose identified by the group in subsection (13) of this section. Any group or organization that receives a mandatory EF fee under KRS 186.162 shall comply with the provisions of this subsection.
- (15) The secretary of the Transportation Cabinet shall promulgate administrative regulations under KRS Chapter 13A to establish additional rules to implement the issuance of special license plates issued under this chapter, including but not limited to:
- (a) Documentation that will be required to accompany an application for a special license plate to provide proof of election to the United States Congress or the Kentucky General Assembly; election or appointment to the Kentucky Court of Justice; membership in a Masonic Order, Fraternal Order of Police, or emergency management organization; membership in the Gold Star Mothers of America; or ownership of an amateur radio operator license;
 - (b) The time schedule permissible for a group or organization to request a design change for the special license plate; and
 - (c) The procedures for review of proposed license plates and the standards by which proposed special license plates are approved or rejected in accordance with subsection (9) of this section.
- (16) Any individual, group, or organization that fails to audit any funds received under this chapter, or that intentionally uses any funds received in any way other than attested to under subsection (13) of this section or for administrative or personnel costs in violation of subsection (13) of this section shall be guilty of a Class D felony and upon conviction shall, in addition to being subject to criminal penalties, be assessed a mandatory five thousand dollar (\$5,000) fine.

Approved March 21, 2007.

CHAPTER 41

(SB 47)

AN ACT relating to certification of miners.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 351 IS CREATED TO READ AS FOLLOWS:

In lieu of an examination prescribed by law or regulation, the board may enter into a reciprocal agreement with another state regarding the certification of miners. The board may, pursuant to a reciprocal agreement, issue to

any person holding a certificate issued by another state a certificate permitting him or her to perform similar tasks in the Commonwealth if:

- (1) The board finds that the requirements for certification in the other state are substantially equivalent to those of Kentucky;*
- (2) The person passes only the applicable part of the examination with regard to Kentucky law which is uniquely different from the other state;*
- (3) The person has submitted proof, in accordance with KRS 351.182, that he or she is drug and alcohol free;*
- (4) The person's retraining is sufficient to meet Kentucky requirements; and*
- (5) The person's certification in Kentucky or in any other state has not been suspended, revoked, or probated.*

Approved March 21, 2007.

CHAPTER 42

(HB 243)

AN ACT relating to the Kentucky Single Family Dwellings Advisory Committee.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) There is hereby created the Kentucky Single Family Dwellings Advisory Committee, which shall be attached to the Office of Housing, Buildings, and Construction for administrative purposes.*
- (2) The committee shall be comprised of eight (8) members as follows:*
 - (a) Three (3) members who shall be home builders appointed by the Governor from a list of six (6) nominees submitted by the Home Builders Association of Kentucky. Each nominee shall have been actively engaged in the home building business for not less than five (5) years immediately preceding the date of his or her appointment to the committee;*
 - (b) Three (3) members who shall be certified code inspectors appointed by the Governor from a list of six (6) nominees submitted by the Code Administrators Association of Kentucky. Each nominee shall have been actively engaged as a certified code inspector for not less than five (5) years immediately preceding the date of his or her appointment to the committee;*
 - (c) One (1) member who shall be an architect appointed by the Governor from a list of three (3) nominees submitted by the Kentucky Chapter of the American Society of Architects. Each nominee shall have been actively engaged as a licensed architect for not less than five (5) years immediately preceding the date of his or her appointment to the committee; and*
 - (d) The executive director of the Office of Housing, Buildings, and Construction, or his or her designee.*
- (3) Each member of the committee shall be a citizen and resident of the Commonwealth of Kentucky.*
- (4)*
 - (a) Appointed members shall serve staggered terms of three (3) years that shall expire on June 30 of the final year of the term, except that, of the initial appointments, three (3) members shall serve for a term of three (3) years, two (2) members shall serve for a term of two (2) years, and two (2) members shall serve for a term of one (1) year.*
 - (b) The executive director of the Office of Housing, Buildings, and Construction shall serve on the committee for the duration of his or her term of appointment to that state government position.*
 - (c) No member shall serve more than two (2) consecutive terms.*
 - (d) Members may serve until their successors are appointed and qualified.*
 - (e) A vacancy in an unexpired term shall be filled in the same manner as the original appointment.*
- (5) The executive director of the Office of Housing, Buildings, and Construction, or his or her designee, shall serve as chair of the committee.*

- (6) *A majority of the members of the committee shall constitute a quorum for conducting business.*
- (7) *The committee shall meet at least once each calendar quarter in a location designated by the chair. The committee may meet upon special call by the chair or by a majority of the committee.*
- (8) *Each appointed member listed in subsection (2)(a), (b), and (c) of this section shall receive twenty-five (\$25) dollars per diem for attending each meeting and shall be reimbursed for actual and necessary expenses incurred in the performance of his or her official duties. The executive director of the Office of Housing, Buildings, and Construction shall not be eligible for a per diem.*
- (9) *The duties of the Kentucky Single Family Dwellings Advisory Committee shall be to:*
 - (a) *Review and interpret the International Building Code and make recommendations to the Kentucky Board of Housing, Buildings, and Construction as to which elements of the international code should be incorporated into the Kentucky State Residential Building Code; and*
 - (b) *Perform any other duties and responsibilities relating to the topic of single family dwellings that may be assigned by the Kentucky Board of Housing, Buildings, and Construction.*

Approved March 21, 2007.

CHAPTER 43

(SB 83)

AN ACT relating to speed limits.

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

Section 1. KRS 189.390 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Business district" means the territory contiguous to and including a highway if, within six hundred (600) feet along the highway, there are buildings in use for business or industrial purposes that occupy three hundred (300) feet of frontage on one (1) side or three hundred (300) feet collectively on both sides of the highway;
 - (b) "Residential district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred (300) feet or more is improved with residences or residences and buildings in use for business; and
 - (c) "State highway" means a highway or street maintained by the Kentucky Department of Highways.
- (2) An operator of a vehicle upon a highway shall not drive at a greater speed than is reasonable and prudent, having regard for the traffic and for the condition and use of the highway.
- (3) ***The speed limit for motor vehicles on state highways shall be as follows, unless***~~if~~ **conditions exist that require lower speed for compliance with subsection (2) of this section, *or the secretary of the Transportation Cabinet establishes a different speed limit in accordance with subsection (4) of this section*~~[the speed of any vehicle in excess of the limits specified in this section shall be unlawful]~~:

 - (a) ***Sixty-five (65) miles per hour on interstate highways, and parkways;***
 - (b) ***Fifty-five (55) miles per hour on all other state highways; and***
 - (c) ***Thirty-five (35) miles per hour in a business or residential district***~~[For vehicles other than motor vehicles of five (5) horsepower or less, thirty-five (35) miles per hour in any business or residential district, except as provided in subsection (5) of this section, and fifty five (55) miles per hour in other locations, except where the speed limit has been posted at sixty five (65) miles per hour;]~~
 - ~~[(b) For motor vehicles of five (5) horsepower or less, thirty five (35) miles per hour in any location except as provided in subsection (5) of this section;]~~
 - ~~[(c) Vehicles using off street parking facilities offered for public use whether publicly or privately owned, fifteen (15) miles per hour].~~**

- (4) (a) If the secretary of transportation determines, upon the basis of an engineering and traffic investigation, that any speed limit is greater or less than is reasonable or safe under the conditions found to exist at any intersection, or upon any part of a state highway, the secretary of transportation may establish by official order a reasonable and safe speed limit at the location. The secretary shall not increase any speed limit established by subsection (3) of this section in excess of *sixty-five (65)*~~[fifty-five (55)]~~ miles per hour, *except that, notwithstanding the provisions of subsection (3)(a) of this section, the secretary may increase the speed limit on any of the following segments of highway to seventy (70) miles per hour:*
1. *Interstate 24 (entire length);*
 2. *Interstate 64 from Interstate 264 to the West Virginia state line;*
 3. *Interstate 65 from Interstate 264 to the Tennessee state line;*
 4. *Interstate 71 from Interstate 264 to Interstate 275;*
 5. *Interstate 75 from the Tennessee state line to Interstate 275;*
 6. *The Audubon Parkway (entire length);*
 7. *The Julian M. Carroll Purchase Parkway (entire length);*
 8. *The Bert T. Combs Mountain Parkway from Interstate 64 to the beginning of the Mountain Parkway Extension (KY 9009) in Wolfe County;*
 9. *The Edward T. Breathitt Pennyrite Parkway (entire length);*
 10. *The Wendell H. Ford Western Kentucky Parkway (entire length);*
 11. *The Louie B. Nunn Cumberland Parkway (entire length);*
 12. *The Martha Layne Collins Bluegrass Parkway (entire length);and*
 13. *The William H. Natcher Parkway (entire length).*
- (b) In a highway work zone, the Transportation Cabinet may temporarily reduce established speed limits without an engineering or traffic investigation. A speed limit established under this paragraph shall become effective when and where posted. The Transportation Cabinet shall post signs notifying the traveling public of the temporary highway work zone maximum speed limit. Nothing in this paragraph shall be construed to prevent the Transportation Cabinet from using moveable or portable speed limit signs in highway work zones.
- (5) (a) A city or a county may by ordinance establish speed limits within its own jurisdiction, except as provided in paragraph (b) of this subsection.
- (b) The alteration of speed limits on state highways within a city or a county shall not be effective until the alteration has been approved by the secretary of transportation. The secretary shall not approve any alteration that could increase any speed limit established by subsection (3)(b) or (c) of this section in excess of fifty-five (55) miles per hour.
- (c) If a county determines, upon the basis of an engineering and traffic investigation and study, that it is unsafe to park motor vehicles on or along any highway, other than a state highway, within the unincorporated areas of the county, or that in any business district the congestion of traffic justifies a reasonable limitation on the length of time any one (1) motor vehicle is permitted to park in such district so as to reduce the congestion, the fiscal court may by ordinance establish "no parking" areas on the highway, or limit the length of time any motor vehicle may be parked in any business district.
- ~~[(d) Notwithstanding the other limitations in this subsection, the secretary of transportation may establish, by official order, reasonable and safe speed limits on interstate highways and divided highways with four (4) or more lanes and fully controlled access, a speed limit not to exceed sixty-five (65) miles per hour.]~~
- (6) *The speed limit for motor vehicles in an off-street parking facility offered for public use, whether publicly or privately owned, shall be fifteen (15) miles per hour.*
- (7) A person shall not drive a motor vehicle at a speed that will impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law.

- ~~(8)(7)~~ In every charge for a violation of any speed limit specified in this section, the warrant or citation shall specify the speed at which the defendant is alleged to have driven, and the lawful speed limit applicable at the location where the violation is charged to have occurred.

Section 2. KRS 189.340 is amended to read as follows:

- (1) Vehicles overtaking other vehicles proceeding in the same direction shall pass to the left of them and shall not again drive to the right until reasonably clear of those vehicles. Vehicles overtaking streetcars may pass either to the right or left when so directed by a police officer, when on a one (1) way street or where the location of the tracks prevents compliance with this section, with regard for other traffic.
- (2) The operator of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
 - (a) When the vehicle overtaken is making or about to make a left turn;
 - (b) Upon a roadway with unobstructed pavement of sufficient width for two (2) or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.
- (3) The operator of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movements in safety. Such movement shall not be made by driving off the roadway unless passing vehicle comes to a complete stop and such movement may be made safely.
- (4) No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and free of oncoming traffic for a sufficient distance ahead to permit overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event, the overtaking vehicle must return to the right-hand side of the roadway before coming within two hundred (200) feet of any vehicle approaching from the opposite direction.
- (5) The commissioner of highways is hereby authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones, and when such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof.
- (6) Whenever any roadway has been divided into three (3) clearly marked lanes for travel, the following additional rules shall apply:
 - (a) A vehicle shall be driven as nearly as may be practical entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety;
 - (b) A vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and the center lane is clear of traffic within a safe distance, or in preparation for a left turn or where a center lane is at the time allocated exclusively to traffic moving in the direction in which the vehicle is proceeding and is signposted to give notice of the allocation; and
 - (c) Official signs may be erected directing slow-moving traffic to use a designated lane or allocating specified lanes to traffic moving in the same direction and operators of vehicles shall obey the directions of such signs.
- (7) A vehicle shall not be driven in the left lane of any limited access highway of four (4) lanes or more with a posted speed limit of *at least* sixty-five (65) miles per hour, except in overtaking a slower vehicle, yielding to traffic coming onto such a highway or when traffic conditions exist which would prohibit safe use of the right or center lanes.
- (8)
 - (a) The operator of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having regard for the speed of the vehicle and the traffic upon and condition of the highway.
 - (b) The operator of any motor truck, semitrailer truck, bus, or heavy construction equipment unit, when traveling upon a highway outside of a business or residential district, shall not follow within two hundred fifty (250) feet of another such vehicle or equipment unit. This subsection shall not prevent overtaking and passing, nor shall it apply to any lane specially designated for use of motor trucks or semitrailer trucks, buses or heavy construction equipment units.

Approved March 21, 2007.

CHAPTER 44**(HCR 120)**

A CONCURRENT RESOLUTION commemorating the 100th anniversary of the United Parcel Service, Inc. (UPS) and recognizing its contributions to the people of the Commonwealth.

WHEREAS, founded in 1907 as a messenger service, UPS has grown into the world's largest package delivery company; and

WHEREAS, every day, UPS manages the flow of goods, funds, and information in more than 200 countries and territories; and

WHEREAS, on August 28, 2007, UPS will celebrate its 100th anniversary; and

WHEREAS, UPS has served Kentucky since 1934 and, today, employs over 20,000 employees and operates 69 facilities across the Commonwealth; and

WHEREAS, Louisville, Kentucky is the headquarters for UPS WorldportSM, UPS's all-points international air hub, and the UPS Airline, which is the eighth largest in the world; and

WHEREAS, each day, over 84,000 citizens of Kentucky utilize the express delivery and the specialized transportation and logistics services provided by UPS; and

WHEREAS, UPS delivers more than 210,000 packages every day to customers across Kentucky, connecting people, communities, and businesses; and

WHEREAS, the services provided by UPS connect the people of Kentucky to more than 200 countries through its expansive transportation network that truly synchronizes global commerce; and

WHEREAS, UPS has contributed more than \$17 million to philanthropic endeavors in the Commonwealth of Kentucky since 1995, thus reflecting the company's emphasis on community service and good citizenship; and

WHEREAS, UPS will continue to both provide a substantial economic impact to the people of Kentucky and focus on cultivating deep partnerships with the communities it serves;

NOW, THEREFORE,

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

Section 1. The Kentucky General Assembly hereby commemorates the 100th anniversary of the United Parcel Service, Inc., celebrating both its growth from a messenger service in 1907 to a global package delivery company in 2007, and its presence in Kentucky since 1934.

Section 2. The Kentucky General Assembly recognizes and celebrates the economic and philanthropic contributions made by the United Parcel Service, Inc. to the people of the Commonwealth and calls upon all Kentuckians to join in congratulating UPS on the occasion of its 100th anniversary.

Approved March 21, 2007.

CHAPTER 45**(HB 130)**

AN ACT relating to reorganization.

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

Section 1. KRS 151B.185 is amended to read as follows:

- (1) The Office of Vocational Rehabilitation is hereby created within the Education Cabinet, Department of Workforce Investment. The office shall consist of an executive director and those administrative bodies and employees provided or appointed pursuant to law. The office shall be composed of the Division of Program Services and the Division of the Carl D. Perkins **Vocational Training** ~~Rehabilitation~~ Center. Each division

shall be headed by a director appointed by the secretary of the Education Cabinet under the provisions of KRS 12.050, and shall be composed of organizational entities as deemed appropriate by the secretary of the Education Cabinet.

- (2) The Office of Vocational Rehabilitation shall have such powers and duties as contained in KRS 151B.180 to 151B.210 and such other functions as may be established by administrative regulation.
- (3) The office shall be the sole state agency for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds for vocational rehabilitation.
- (4) The chief executive officer of the office shall be the executive director of the Office of Vocational Rehabilitation. The executive director shall be appointed by the secretary of the Education Cabinet under the provisions of KRS 12.050. The executive director shall have experience in vocational rehabilitation and supervision and shall have general supervision and direction over all functions of the office and its employees, and shall be responsible for carrying out the programs and policies of the office.
- (5) Except as otherwise provided, the office shall be the state agency responsible for all rehabilitation services and for other services as deemed necessary. The office shall be the agency authorized to expend all state and federal funds designated for rehabilitation services. The Office of the Secretary of the Education Cabinet is authorized as the state agency to receive all state and federal funds and gifts and bequests for the benefit of rehabilitation services.
- (6) Employees under the jurisdiction of the Office of Vocational Rehabilitation who are members of a state retirement system as of June 30, 1990, shall remain in their respective retirement systems.

Section 2. KRS 167.250 is amended to read as follows:

The chief state school officer may provide liability insurance or an indemnity bond against the negligence of drivers of motor vehicles owned or operated by the Department of Education for the transportation of members of the student bodies of the Kentucky School for the Blind, the Kentucky School for the Deaf, and the ***Carl D. Perkins Vocational Training Center***~~[Eastern Kentucky Comprehensive Rehabilitation Center at Thelma]~~. If the transportation of members of the student bodies is let out under contract, the contract shall require the contractor to carry an indemnity bond or liability insurance against negligence in such amounts as the chief state school officer designates. In either case, the indemnity bond or insurance policy shall be issued by a surety or insurance company authorized to transact business in this state, and shall bind the company to pay any final judgment not to exceed the limits of the policy rendered against the insured for loss or damage to property of any student or other person, or death or injury of any student or other person.

Section 3. The General Assembly hereby confirms Executive Order 2006-1438 dated November 20, 2006, relating to changing the name of the Carl D. Perkins Rehabilitation Center in the Department of Workforce Investment, Education Cabinet, to the Carl D. Perkins Vocational Training Center.

Approved March 21, 2007.

CHAPTER 46

(HB 66)

AN ACT relating to elections.

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

Section 1. KRS 118.105 is amended to read as follows:

- (1) Except as provided in subsections (3) and (4) of this section and in KRS 118.115, every political party shall nominate all of its candidates for elective offices to be voted for at any regular election at a primary election held as provided in this chapter, and the governing authority of any political party shall have no power to nominate any candidate for any elective office or to provide any method of nominating candidates for any elective office other than by primary elections as provided in this chapter.
- (2) Any political organization not constituting a political party as defined in KRS 118.015 may make its nominations as provided in KRS 118.325.
- (3) If a vacancy occurs in the nomination of an unopposed candidate or in a nomination made by the primary before the certification of candidates for the regular election made under KRS 118.215, because of death,

disqualification to hold the office sought, or severe disabling condition which arose after the nomination, the governing authority of the party may provide for filling the vacancy, but only following certification to the governing authority, by the Secretary of State, that a vacancy exists for a reason specified in this subsection. When such a nomination has been made, the certificate of nomination shall be signed by the chairman and secretary of the governing authority of the party making it, and shall be filed in the same manner as certificates of nomination at a primary election.

- (4) If a vacancy occurs in the nomination of an unopposed candidate or in a nomination made by the primary before the certification of candidates for the regular election, and if that party's nominee was the only political party candidate for the office sought, the governing authority of each party may nominate a candidate for the regular election, provided that no person has sought that party's nomination by filing a notification and declaration.
- (5) ***If a vacancy occurs in the nomination of a candidate under the conditions of subsection (3) or (4) of this section prior to September 15 preceding the day of the regular election, certificates of nomination for replacement candidates shall be filed in the same manner as provided in subsections (3) and (4) not later than 4 p.m. ten (10) days after the vacancy occurs, excluding weekends and legal holidays.*** If a vacancy occurs in the nomination of a candidate under the conditions of ~~subsections~~ subsections (3) or (4) of this section ~~on or after September 15~~ *on or after September 15* ~~the certification of candidates for the regular election but not later than the second Thursday~~ preceding the date of the regular election, certificates of nomination for replacement candidates shall be filed in the same manner as provided in subsections (3) and (4) not later than 4 p.m. five (5) days after the vacancy occurs, ***excluding weekends and legal holidays.***
- (6) If a vacancy in candidacy described in subsection (5) of this section occurs later than the second Thursday preceding the date of the regular election, no certificates of nomination shall be filed and any candidate whose name does not appear on the ballot may seek election by write-in voting pursuant to KRS 117.265.
- (7) This section does not apply to candidates for members of boards of education, or presidential electors, nor to candidates participating in nonpartisan elections.

Section 2. KRS 118.305 is amended to read as follows:

- (1) Except as provided in KRS 118.345, and subject to the provisions of subsections (2), (3), and (4) of this section, the county clerk of each county shall cause to be printed for the voting machines and on the absentee ballots for the regular election the names of the following persons:
 - (a) Candidates of a political party, as defined in KRS 118.015, who have received certificates of nomination at the preceding primary election, or certificates of nomination under KRS 118.185, and whose certificates of nomination have been filed with the Secretary of State or the appropriate county clerk;
 - (b) Candidates of a political party, as defined in KRS 118.015, who have been nominated for an unexpired term in a manner determined by the governing authority of the party, as provided in KRS 118.115, and whose evidences of nomination have been filed with the Secretary of State or the appropriate county clerk within the time prescribed in this chapter;
 - (c) Candidates of a political party, as defined in KRS 118.015, who have been nominated by the governing authority of the party to fill a vacancy in the candidacy of a person nominated at the preceding primary election, as provided in KRS 118.105, and whose certificates of nomination have been filed with the Secretary of State or the appropriate county clerk, by at least the date provided by the election law generally for such filing;
 - (d) Candidates who have been nominated by a political organization as provided in KRS 118.325 and whose certificates or petitions of nomination have been filed with the Secretary of State or the appropriate county clerk within the time prescribed in this chapter;
 - (e) Independent candidates who have been nominated by petition as provided in KRS 118.315, and whose petitions of nomination have been filed with the Secretary of State or the appropriate county clerk within the time prescribed in this chapter;
 - (f) Successful nominees of all nonpartisan primaries which shall have been conducted;

- (g) Candidates who have filed a petition of candidacy as shall be required to fill a vacancy which shall appear on the ballot;
 - (h) The county clerk shall determine whether the name of any replacement candidate who has been nominated as provided in KRS 118.105(5) may be placed on the machine ballot or ballot cards and whether the voting machine may be reprogrammed to count the votes cast for that candidate or whether the ballot or ballot cards must be reprinted to accommodate votes cast for any replacement candidate and shall take the appropriate action to accommodate the replacement of any candidate. If the county clerk determines that the name of any replacement candidate cannot be accommodated on the existing ballot or ballot cards and if there is insufficient time before the election to reprint the entire ballot, the county clerk shall request approval to use supplemental paper ballots for voting for that office only in the same manner as permitted for other situations as provided in KRS 118.215(5), and, if approved, shall have an adequate number of supplemental paper ballots printed for voting for that office and only votes cast for that office by means of the supplemental paper ballots shall be tabulated and recorded by the precinct election officers and county board of elections. All actions by a county clerk, the State Board of Elections, and the Secretary of State which are necessary to provide for voting at a regular election for candidates nominated pursuant to KRS 118.105(5) shall be carried out with all possible speed. When a candidate has been replaced as provided in KRS 118.105(5) after absentee ballots have been printed and distributed for the regular election, neither the precinct election officers nor the county board of elections shall tabulate or record any absentee votes cast for the candidate who was replaced. If ballots are reprinted or supplemental paper ballots are printed, ***or if voting machines must be reprogrammed to count the votes cast for a replacement candidate***, the costs for the printing ***and reprogramming*** shall be paid by the political party who has nominated a replacement candidate, or proportionately by each political party if each party nominates a replacement candidate;
 - (i) Candidates for President and Vice President of the United States, of those political parties and organizations who have nominated presidential electors as provided in KRS 118.325, if the certificate of nomination of the electors has been filed with the Secretary of State within the time prescribed in this chapter;
 - (j) Candidates for soil and water district supervisors who have been nominated by petition as provided in KRS 262.210; and
 - (k) Candidates for city office for which no nonpartisan primary has been conducted in a city which requires nonpartisan city elections.
- (2) Any candidate for city office who is defeated in a partisan or nonpartisan primary election shall be ineligible as a candidate for the same office in the regular election.
 - (3) Candidates for members of boards of education shall have their names printed on ballot labels and absentee ballots for the regular election only after filing as provided in KRS 160.220.
 - (4) Except as provided in KRS 118.105 and 118.115, the name of no candidate shall be printed upon the ballot labels and absentee ballots for any regular election as the nominee of any political party, as defined in KRS 118.015, or under the emblem of any political party, as so defined, except those candidates who have been duly and regularly nominated as nominees of that party at a primary election held as provided in this chapter.
 - (5) No county clerk shall knowingly cause to be printed, upon the ballot labels or absentee ballots for any regular election, the name of any candidate of a political party, as defined in KRS 118.015, who has not been nominated in the manner provided in the primary election laws or the name of any candidate who is not in compliance with the restrictions concerning party registration and candidacy provided in subsection (1) of KRS 118.315.
 - (6) The names of candidates for President and Vice President shall be certified in lieu of certifying the names of the candidates for presidential electors.
 - (7) When a vacancy occurs in an elective office which is required by law to be filled temporarily by appointment, the officer or body designated by law to make the appointment, or in the case of an office to be filled by appointment from a list of nominations, the officer or body designated by law to make the nominations, shall immediately notify in writing both the county clerk and Secretary of State of the vacancy.

Approved March 21, 2007.

CHAPTER 47

(SB 76)

AN ACT relating to reorganization.

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

Section 1. KRS 147A.002 is amended to read as follows:

- (1) The **Governor's Office for Local Development**~~[Department for Local Government]~~ shall be headed by a commissioner, and shall *consist of the*:
 - (a) *Office of Financial Management and Administration, which shall be headed by an executive director appointed by the commissioner and shall be responsible for duties including but not limited to local government financial assistance; county budget approval; performance of various recordkeeping requirements for the Commonwealth's cities, counties, and special districts; provision of administrative support for the state local debt officer and the state local finance officer; administration of the county officials training incentive program set forth in Section 38 of this Act; and provision of financial analysis and guidance related to the internal budgetary processes of the Governor's Office for Local Development;*
 - (b) *Office of Federal Grants, which shall be headed by an executive director appointed by the commissioner and shall be responsible for the administration of all federal grant programs;*
 - (c) *Office of State Grants, which shall be headed by an executive director appointed by the commissioner and shall be responsible for the administration of all state grant programs, including the Renaissance on Main program, the area development fund, the body armor program set forth in Section 10 of this Act, the cemetery fund program, single county coal severance grants, and any state grant programs or individually funded projects awarded by statute or budget;*
 - (d) *Office of Legal Services, which shall be headed by an executive director appointed by the commissioner and shall be responsible for legal services within the Governor's Office for Local Development and for its constituencies around the Commonwealth; and*
 - (e) *Office of Field Services, which shall be headed by an executive director appointed by the commissioner and shall be responsible for duties including but not limited to staffing regional offices to assist local governments*~~[be divided for administrative purposes into the Division of Community Development and such other divisions as the commissioner, with the approval of the Governor, determines. The Division of Community Development shall be responsible for the administration of Title I of the Housing and Community Development Act of 1974 as amended through 1981, which includes the community block grant program and the 107 technical assistance program].~~
- (2) The commissioner, with the approval of the Governor, shall appoint necessary deputies, assistants, attorneys, and other employees and shall fix their compensation and authorize payment of their expenses according to law.

Section 2. KRS 147A.003 is amended to read as follows:

The **Kentucky Infrastructure Authority**~~[following administrative bodies]~~ shall be attached to the **Governor's Office for Local Development**~~[Department for Local Government]~~ for administrative purposes. *Office space required by the authority shall be provided by the Governor's Office for Local Development*~~;~~

- ~~(1) Local Government Advisory Commission;~~
- ~~(2) Appalachian Development Council; and~~
- ~~(3) The State Federal Council for Balanced Economic Growth.~~

Section 3. KRS 147A.200 is amended to read as follows:

- (1) The Department for Local Government is authorized and directed to apply for and receive federal funds to be placed in a state account called the gas system restoration and development project account, and to provide staff to administer said funds. The funds in this account may be used in any gas system restoration or

development project approved by the Gas System Restoration and Development Project Account Review Board.

- (2) A Gas System Restoration and Development Project Account Review Board is established, and shall consist of **eight (8)**~~seven (7)~~ members appointed by the Governor. The board shall be chaired by the commissioner of the Department for Local Government, and shall include representatives of the Public Service Commission, State Fire Marshal's Office, Department for Local Government, **Kentucky Infrastructure Authority**, banking and finance industry, commercial or industrial consumers, Kentucky Gas Association, and low income or minority group consumers. Members shall be reimbursed for necessary expenses in attending meetings.
- (3) The review board shall meet as necessary, and shall establish rules for conducting its business. The review board shall consider applications for loans from the account, and approve or disapprove loan applications. No loan shall be considered unless the applicant has complied with all construction and securities requirements of the Public Service Commission. In reviewing loan applications, the review board may request the testimony of the county judge/executive of an affected county, and any other witnesses deemed appropriate.

Section 4. KRS 11.400 is amended to read as follows:

- (1) In addition to the duties prescribed for the office by the Constitution of the Commonwealth of Kentucky, the duties of the Lieutenant Governor shall be as follows:
 - (a) To serve as vice chairman of the State Property and Buildings Commission as prescribed by KRS 56.450;
 - (b) To serve as vice chairman of the Kentucky Turnpike Authority as prescribed in KRS 175.430;
 - (c) To serve as a member of the Kentucky Council on Agriculture in accordance with KRS 247.417;
 - (d) To appoint one (1) member of the Public Officials' Compensation Commission as provided in KRS 64.742;
 - (e) To serve as a member of the Board of the Kentucky Housing Corporation in accordance with KRS 198A.030; **and**
 - ~~(f) To serve as a member of the Appalachian Development Council as provided in KRS 154.33-020; and~~
 - ~~(g)~~ To serve as a member of Kentucky delegations on the following interstate compact commissions or boards:
 1. The Southern Growth Policies Board as prescribed by KRS 147.585;
 2. The Breaks Interstate Park Commission as provided in KRS 148.225;
 3. The Falls of the Ohio Interstate Park Commission pursuant to KRS 148.242;
 4. The Tennessee-Tombigbee Waterway Development Authority pursuant to KRS 182.305;
 5. The Interstate Water Sanitation Control Commissions as prescribed by KRS 224.18-710; and
 6. The Kentucky Mining Advisory Council for the Interstate Mining Compact as provided by KRS 350.310.
- (2) Nothing in this section shall prohibit the Governor and Lieutenant Governor from agreeing upon additional duties within the executive branch of the state government to be performed by the Lieutenant Governor.

Section 5. KRS 11.515 is amended to read as follows:

- (1) There is hereby established a Geographic Information Advisory Council to advise the executive director of the Commonwealth Office of Technology on issues relating to geographic information and geographic information systems.
- (2) The council shall establish and adopt policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.
- (3) The council shall closely coordinate with users of geographic information systems to establish policies and procedures that insure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.

- (4) The Geographic Information Advisory Council shall consist of twenty-four (24) members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.
- (a) The council shall consist of:
1. The secretary of the Transportation Cabinet or his designee;
 2. The secretary of the Cabinet for Health and Family Services or his or her designee;
 3. The director of the Kentucky Geological Survey or his designee;
 4. The secretary of the Finance and Administration Cabinet or his designee;
 5. The executive director of the Commonwealth Office of Technology or her or his designee;
 6. The secretary of the Economic Development Cabinet or his designee;
 7. The commissioner of the *Governor's Office for Local Development*~~{Department for Local Government}~~ or his designee;
 8. The secretary of the Justice Cabinet or his designee;
 9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
 10. The adjutant general of the Department of Military Affairs or his designee;
 11. The commissioner of the Department of Education or his designee;
 12. The secretary of the Environmental and Public Protection Cabinet or his designee;
 13. The Commissioner of the Department of Agriculture or his designee;
 14. The secretary of the Commerce Cabinet or his designee;
 15. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;
 16. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky Association of Counties;
 17. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;
 18. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;
 19. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;
 20. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers;
 21. One (1) member appointed by the Governor from a list of three (3) persons submitted by the chairman of the Kentucky Board of Registered Geologists; and
 22. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.
- (b) The council shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.
- (5) The chair shall be appointed by the Governor. The council may have committees and subcommittees as determined by the council or an executive committee, if an executive committee exists.
- (6) A member of the council shall not:

- (a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that have, a substantial interest in the geographic information industry and is doing business in the Commonwealth;
 - (b) Own, control, or have, directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;
 - (c) Be in any manner connected with any contract or bid for furnishing any governmental body of the Commonwealth with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;
 - (d) Be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, substantial interest in the geographic information industry;
 - (e) Accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise; or
 - (f) Be liable to civil action or any action performed in good faith in the performance of duties as a council member.
- (7) Those council members specified in subsection (4)(a) of this section who serve by virtue of an office shall serve on the council while they hold that office.
 - (8) Appointed members of the council shall serve for a term of four (4) years. Vacancies in the membership of the council shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.
 - (9) The council shall have no funds of its own, and council members shall not receive compensation of any kind from the council.
 - (10) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at council meetings.

Section 6. KRS 12.020 is amended to read as follows:

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

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

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

6. Department of Agriculture.
 - (a) Commissioner of Agriculture.
 - (b) Kentucky Council on Agriculture.
 7. Auditor of Public Accounts.
- II. Program cabinets headed by appointed officers:
1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Division of Kentucky State Medical Examiners Office.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
 2. Education Cabinet:
 - (a) Office of the Secretary.
 - (b) Office of Legal Services.
 1. Client Assistance Program.
 - (c) Office of Communication.
 - (d) Office of Legislative and Intergovernmental Affairs.
 - (e) Office of Budget and Administration.
 1. Division of Human Resources.
 2. Division of Administrative Services.
 3. Division of Technology Services.
 - (f) Board of Directors for the Center for School Safety.
 - (g) Council on Postsecondary Education.
 1. Foundation for Adult Education.
 - (h) Department of Education.
 1. Kentucky Board of Education.
 - (i) Department for Libraries and Archives.
 - (j) Department of Workforce Investment.
 1. Office for the Blind.
 2. Office of Vocational Rehabilitation.
 3. Office of Career and Technical Education.
 4. Office of Employment and Training.

- (k) Foundation for Workforce Development.
 - (l) Kentucky Office for the Blind State Rehabilitation Council.
 - (m) Kentucky Technical Education Personnel Board.
 - (n) Kentucky Workforce Investment Board.
 - (o) Statewide Council for Vocational Rehabilitation.
 - (p) Statewide Independent Living Council.
 - (q) Unemployment Insurance Commission.
 - (r) Education Professional Standards Board.
 - 1. Division of Educator Preparation.
 - 2. Division of Certification.
 - 3. Division of Professional Learning and Assessment.
 - 4. Division of Legal Services.
 - (s) Kentucky Commission on the Deaf and Hard of Hearing.
 - (t) Kentucky Educational Television.
 - (u) Kentucky Environmental Education Council.
3. Environmental and Public Protection Cabinet:
- (a) Office of the Secretary.
 - 1. Office of Legislative and Intergovernmental Affairs.
 - 2. Office of Communications and Public Outreach.
 - 3. Office of Regulatory Affairs.
 - 4. Office of Legal Services.
 - 5. Office of Administrative and Information Services.
 - 6. Office of Administrative Hearings.
 - 7. Office of Inspector General.
 - 8. Mine Safety Review Commission.
 - 9. Workers' Compensation Board.
 - 10. Kentucky State Nature Preserves Commission.
 - 11. Kentucky Environmental Quality Commission.
 - 12. Kentucky Occupational Safety and Health Review Commission.
 - (b) Department for Environmental Protection.
 - 1. Office of the Commissioner.
 - 2. Division of Air Quality.
 - 3. Division of Water.
 - 4. Division of Environmental Services.
 - 5. Division of Waste Management.
 - 6. Division of Enforcement.
 - 7. Division of Compliance Assistance.
 - (c) Department for Natural Resources.

1. Office of the Commissioner.
 2. Office of Technical and Administrative Support.
 3. Division of Mine Permits.
 4. Division of Mine Reclamation and Enforcement.
 5. Division of Abandoned Mine Lands.
 6. Division of Oil and Gas Conservation.
 7. Office of Mine Safety and Licensing.
 8. Division of Forestry.
 9. Division of Conservation.
- (d) Department of Public Protection.
1. Office of the Commissioner.
 2. Division of Administrative Services.
 3. Crime Victims Compensation Board.
 4. Board of Claims.
 5. Board of Tax Appeals.
 6. Kentucky Boxing and Wrestling Authority.
 7. Kentucky Horse Racing Authority.
 8. Kentucky Public Service Commission.
 9. Office of Alcoholic Beverage Control.
 10. Office of Charitable Gaming.
 11. Office of Financial Institutions.
 12. Office of Housing, Buildings and Construction.
 13. Office of Insurance.
- (e) Department of Labor.
1. Office of the Commissioner.
 2. Office of Occupational Safety and Health.
 3. Office of Labor Management Relations and Mediation.
 4. Office of Workplace Standards.
 5. Office of Workers' Claims.
 6. Workers' Compensation Funding Commission.
 7. Kentucky Labor Management Advisory Council.
 8. Occupational Safety and Health Standards Board.
 9. Prevailing Wage Review Board.
 10. Kentucky Employees Insurance Association.
 11. Apprenticeship and Training Council.
 12. State Labor Relations Board.
 13. Workers' Compensation Advisory Council.
 14. Workers' Compensation Nominating Commission.

15. Employers' Mutual Insurance Authority.
16. Division of Administrative Services.
4. Transportation Cabinet:
 - (a) Department of Highways.
 1. Office of Program Planning and Management.
 2. Office of Project Development.
 3. Office of Construction and Operations.
 4. Office of Intermodal Programs.
 5. Highway District Offices One through Twelve.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Aviation.
 - (e) Department of Intergovernmental Programs.
 1. Office of Transportation Enhancement Programs.
 2. Office of Rural and Secondary Roads.
 - (f) Office of the Secretary.
 1. Office of Legislative and Intergovernmental Affairs.
 2. Office of Public Affairs.
 3. Office of Transportation Delivery.
 4. Office for Business and Occupational Development.
 5. Office of Budget and Fiscal Management.
 6. Office of Legal Services.
 7. Office of Inspector General.
 8. Office of the Transportation Operations Center.
 9. Office of Personnel Management.
5. Cabinet for Economic Development:
 - (a) Office of Administration and Support.
 - (b) Department for New Business Development.
 - (c) Department of Financial Incentives.
 - (d) Department for Existing Business Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
 - (g) Office of Research and Information Technology.
 - (h) Department of Commercialization and Innovation.
 - (i) Office of Legal Services.
 - (j) Commission on Small Business Advocacy.
6. Cabinet for Health and Family Services:
 - (a) Department for Public Health.

- (b) Department for Medicaid Services.
 - (c) Department for Mental Health and Mental Retardation Services.
 - (d) Kentucky Commission for Children with Special Health Care Needs.
 - (e) Office of Health Policy.
 - (f) Office of the Secretary.
 - (g) Office of Legal Services.
 - (h) Office of Inspector General.
 - (i) Office of Legislative and Public Affairs.
 - (j) Department for Community Based Services.
 - (k) Department for Disability Determination Services.
 - (l) Office of the Ombudsman.
 - (m) Department for Human Support Services.
 - (n) Kentucky Commission on Community Volunteerism and Service.
 - (o) Office of Fiscal Services.
 - (p) Office of Human Resource Management.
 - (q) Office of Technology.
 - (r) Office of Contract Oversight.
 - (s) Governor's Office of Wellness and Physical Activity.
7. Finance and Administration Cabinet:
- (a) Office of General Counsel.
 - (b) Office of the Controller.
 - (c) Office of Administrative Services.
 - (d) Office of Public Information.
 - (e) Department for Facilities and Support Services.
 - (f) Department of Revenue.
 - (g) Commonwealth Office of Technology.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Savings Bond Authority.
 - (j) Office of Equal Employment Opportunity and Contract Compliance.
 - (k) ~~County Officials Compensation Board.~~
 - ~~(l)~~ Kentucky Employees Retirement Systems.
 - ~~(l)~~~~(m)~~ Commonwealth Credit Union.
 - ~~(m)~~~~(n)~~ State Investment Commission.
 - ~~(n)~~~~(o)~~ Kentucky Housing Corporation.
 - ~~(o)~~~~(p)~~ Kentucky Local Correctional Facilities Construction Authority.
 - ~~(p)~~~~(q)~~ Kentucky Turnpike Authority.
 - ~~(q)~~~~(r)~~ Historic Properties Advisory Commission.
 - ~~(r)~~~~(s)~~ Kentucky Tobacco Settlement Trust Corporation.

- ~~(s)~~~~(t)~~ State Board for Proprietary Education.
 - ~~(t)~~~~(u)~~ Kentucky Higher Education Assistance Authority.
 - ~~(u)~~~~(v)~~ Kentucky River Authority.
 - ~~(v)~~~~(w)~~ Kentucky Teachers' Retirement System Board of Trustees.
8. Commerce Cabinet:
- (a) Department of Tourism.
 - (1) Division of Tourism Services.
 - (2) Division of Marketing and Advertising.
 - (3) Division of Parks Marketing.
 - (b) Kentucky Department of Parks.
 - (1) Division of Information Technology.
 - (2) Division of Personnel and Payroll.
 - (3) Division of Financial Operations.
 - (4) Division of Facilities Management.
 - (5) Division of Project Administration.
 - (6) Division of Customer Services.
 - (7) Division of Recreation.
 - (8) Division of Golf Courses.
 - (9) Division of Food Services.
 - (10) Division of Rangers.
 - (11) Division of Eastern Parks.
 - (12) Division of Southern Parks.
 - (13) Division of Western Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (1) Division of Law Enforcement.
 - (2) Division of Administrative Services.
 - (3) Division of Engineering.
 - (4) Division of Fisheries.
 - (5) Division of Information and Education.
 - (6) Division of Wildlife.
 - (7) Division of Public Affairs.
 - (d) Kentucky Horse Park.
 - (1) Division of Support Services.
 - (2) Division of Buildings and Grounds.
 - (3) Division of Operational Services.
 - (e) Kentucky State Fair Board.
 - (1) Division of Expositions and Admission.
 - (2) Division of Kentucky Fair and Exposition Center Operations.

- (3) Division of Commonwealth Convention Center.
 - (4) Division of Public Relations and Media.
 - (5) Division of Administrative Services.
 - (6) Division of Personnel Management and Staff Development.
 - (7) Division of Sales.
 - (8) Division of Security and Traffic Control.
 - (f) Office of the Secretary.
 - (g) Office of Finance and Administration.
 - (h) Office of Legal Affairs.
 - (i) Office of Intergovernmental Affairs.
 - (j) Office of Human Resources.
 - (k) Office of Public Affairs and Constituent Services.
 - (l) Office of Information Technology.
 - (m) Office of the Kentucky Sports Authority.
 - (1) Kentucky Sports Authority Board.
 - (n) Office of Creative Services.
 - (o) Office of Capital Plaza Operations.
 - (p) Office of Energy Policy.
 - (1) Energy Policy Advisory Council.
 - (q) Office of Arts and Cultural Heritage.
 - (r) Kentucky African-American Heritage Commission.
 - (s) Kentucky Foundation for the Arts.
 - (t) Kentucky Humanities Council.
 - (u) Kentucky Heritage Council.
 - (v) Kentucky Arts Council.
 - (w) Kentucky Historical Society.
 - (1) Division of Museums.
 - (2) Division of Oral History and Educational Outreach.
 - (3) Division of Research and Publications.
 - (4) Division of Administration.
 - (x) Kentucky Center for the Arts.
 - (1) Division of Governor's School for the Arts.
 - (y) Kentucky Artisans Center at Berea.
 - (z) Martin Luther King Commission.
 - (aa) Northern Kentucky Convention Center.
 - (ab) Eastern Kentucky Exposition Center.
9. Personnel Cabinet:
- (a) Office of the Secretary.

- (b) Department for Personnel Administration.
- (c) Office for Employee Relations.
- (d) Kentucky Public Employees Deferred Compensation Authority.
- (e) Office of Administrative Services.
- (f) Office of Legal Services.
- (g) Office of Government Training.
- (h) Department for Employee Insurance.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. ***Governor's Office for Local Development***~~(Department for Local Government)~~.
- 3. Kentucky Commission on Human Rights.
- 4. Kentucky Commission on Women.
- 5. Department of Veterans' Affairs.
- 6. Kentucky Commission on Military Affairs.
- 7. Office of Minority Empowerment.
- 8. Governor's Council on Wellness and Physical Activity.

Section 7. KRS 12.023 is amended to read as follows:

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

- (1) Department of Military Affairs;
- (2) ***Governor's Office for Local Development***~~(Department for Local Government)~~;
- (3) Kentucky Commission on Human Rights;
- (4) Kentucky Commission on Women;
- (5) Kentucky Commission on Military Affairs;
- (6) Governor's Scholars Program;
- (7) Agricultural Development Board;
- (8) Kentucky Agency for Substance Abuse Policy;
- (9) Kentucky Agricultural Finance Corporation;
- (10) Office of Minority Empowerment;
- (11) Office of Homeland Security; and
- (12) Governor's Council on Wellness and Physical Activity.

Section 8. KRS 15.755 is amended to read as follows:

- (1) The compensation of each Commonwealth's attorney shall be paid out of the State Treasury.
- (2) The compensation of the staff of each Commonwealth's attorney shall be paid out of the State Treasury.
- (3) In each judicial circuit containing a city of the first or second class or an urban-county government, or a city of the third class and a population of sixty-eight thousand (68,000) or more, or which has a full-time Commonwealth's attorney, the Commonwealth's attorney shall not engage in the private practice of law. The population of a judicial circuit shall, for the purpose of this statute, be determined by the most recent federal decennial census enumeration. All other Commonwealth's attorneys shall not be prohibited from engaging in the private practice of law.

- (4) Each Commonwealth's attorney who is prohibited from engaging in the private practice of law shall receive as compensation for his services the sum of twenty-six thousand dollars (\$26,000) per annum.
- (5) Each Commonwealth's attorney who is not prohibited from engaging in the private practice of law shall receive as compensation for his services the sum of fourteen thousand three hundred dollars (\$14,300) per annum.
- (6) Each full-time Commonwealth's attorney of the state shall be paid each month the sum of one thousand dollars (\$1,000) and each part-time Commonwealth's attorney shall be paid each month the sum of five hundred dollars (\$500), which sums are declared to be the equivalent of the minimum sums that each Commonwealth's attorney will expend each month in the performance of his official duties directed to be performed for the Commonwealth. The aforementioned sum shall be paid out of the State Treasury.
- (7) In order to equate the compensation of Commonwealth's attorneys with the purchasing power of the dollar, the **Governor's Office for Local Development**~~[Department for Local Government]~~ shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than twelve thousand dollars (\$12,000) per annum. The **Governor's Office for Local Development**~~[Department for Local Government]~~ shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled in accordance with the increase or decrease in the consumer price index. Upon notification from the **Governor's Office for Local Development**~~[Department for Local Government]~~, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the **Governor's Office for Local Development**~~[Department for Local Government]~~.

Section 9. KRS 15.765 is amended to read as follows:

- (1) Each county attorney shall receive, for prosecutorial duties, an annual salary to be paid out of the State Treasury which shall be the total compensation as county attorney which he received during the calendar year 1976, but which in no event shall be less than twenty thousand dollars (\$20,000). Except, however, the annual salary of each county attorney shall be equal to that of each Commonwealth's attorney who is not prohibited from the private practice of law as provided in KRS 15.755(5), effective January 1, 1990.
- (2) Each county attorney shall be paid each month the sum of five hundred dollars (\$500), which sum is declared to be the equivalent of the minimum sum that each county attorney will expend each month in the performance of his official duties directed to be performed for the Commonwealth. The aforementioned sum shall be paid out of the State Treasury.
- (3) In order to equate the compensation of county attorneys with the purchasing power of the dollar, the **Governor's Office for Local Development**~~[Department for Local Government]~~ shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than twelve thousand dollars (\$12,000) per annum. The **Governor's Office for Local Development**~~[Department for Local Government]~~ shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled pursuant to the increase or decrease in the consumer price index. Upon notification from the **Governor's Office for Local Development**~~[Department for Local Government]~~, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the **Governor's Office for Local Development**~~[Department for Local Government]~~.
- (4) The county attorney shall not be prohibited from engaging in the private practice of law.

Section 10. KRS 16.220 is amended to read as follows:

- (1) Subject to the duty to return confiscated firearms to innocent owners pursuant to KRS 500.090, all firearms confiscated by the Kentucky State Police and not retained for official use pursuant to KRS 500.090 shall be sold at public auction to federally licensed firearms dealers holding a license appropriate for the type of firearm sold. The Kentucky State Police shall transfer firearms that are to be sold to the Department for Facilities and Support Services, Division of Surplus Properties, for sale. Proceeds of the sale shall be transferred to the account of the **Governor's Office for Local Development**~~[Department for Local Government]~~ for use as

provided in subsection (3) of this section. Prior to the sale of any firearm, the Kentucky State Police shall make an attempt to determine if the firearm to be sold has been stolen or otherwise unlawfully obtained from an innocent owner and return the firearm to its lawful innocent owner, unless that person is ineligible to purchase a firearm under federal law.

- (2) The Kentucky State Police shall receive firearms and ammunition confiscated by or abandoned to every law enforcement agency in Kentucky. The Kentucky State Police shall dispose of the firearms received in the manner specified in subsection (1) of this section. However, firearms which are not retained for official use, returned to an innocent lawful owner, or transferred to another government agency or public museum shall be sold as provided in subsections (1) and (3) of this section.
- (3) The proceeds of firearms sales shall be utilized by the ~~Governor's Office for Local Development~~ ~~Department for Local Government~~ to provide grants to city, county, charter county, and urban-county police departments, university safety and security departments organized pursuant to KRS 164.950 and sheriff's departments for the purchase of body armor for sworn peace officers of those departments and service animals, as defined in KRS 525.010, of those departments or for the purchase of firearms or ammunition. Body armor purchased by the department receiving grant funds shall meet or exceed the standards issued by the National Institute of Justice for body armor. No police or sheriff's department shall apply for a grant to replace existing body armor unless that body armor has been in actual use for a period of five (5) years or longer.
- (4) The Kentucky State Police may transfer a machine gun, short-barreled shotgun, short-barreled rifle, silencer, pistol with a shoulder stock, any other weapon, or destructive device as defined by the National Firearms Act which is subject to registration under the National Firearms Act, and is not properly registered in the national firearms transfer records for those types of weapons, to the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury, after a reasonable attempt has been made to transfer the firearm to an eligible state or local law enforcement agency or to an eligible museum and no eligible recipient will take the firearm or weapon. National Firearms Act firearms and weapons which are properly registered and not returned to an innocent lawful owner or retained for official use as provided in this section shall be sold to properly licensed dealers under subsection (3) of this section.

Section 11. KRS 26A.160 is amended to read as follows:

- (1) The Chief Justice shall establish rules of procedure or guidelines on matters relating to the design, financing, and construction of court facilities. The rules or guidelines shall encompass:
 - (a) The duties and responsibilities of the Administrative Office of the Courts under this section;
 - (b) Criteria for evaluating the feasibility or practicability of various contracting or construction methods;
 - (c) A project management system for managing, monitoring, and reporting on projects through all phases from funding to completion, including change-order procedures;
 - (d) Assistance to counties in evaluating proposals for architectural, construction, or other professional services;
 - (e) Methods for financing energy savings projects, Americans with Disabilities Act projects, and other improvement projects;
 - (f) Kentucky standards for court facilities, including detailed requirements for space, construction, interior and exterior finishes, structural and mechanical systems, fixed and moveable furniture and equipment, and maximum unit cost for court facilities throughout the Commonwealth; and
 - (g) The maintenance and operation of court facilities after construction.
- (2) The Administrative Office of the Courts shall oversee the design, financing, and construction of court facilities. The Administrative Office of the Courts shall:
 - (a) Assess the need for court facilities construction or renovation throughout the Commonwealth. The assessment shall consider the age, space adequacy, projected needs, structural soundness, mechanical and electrical systems, security needs, and interior and exterior quality of existing court facilities;
 - (b) Develop a project program for the construction or renovation of court facilities that the Administrative Office of the Courts determines to be most in need of construction or renovation, based on the needs assessment required under paragraph (a) of this subsection. The project program shall detail a complete and specifically defined court facilities project that conforms to the Kentucky standards for court

facilities established under paragraph (f) of subsection (1) of this section, and shall include itemized space requirements, space relationships, design goals, scope limits, site considerations, cost estimates, and a proposed project budget;

- (c) Establish the financial condition of any county that contains a court facility for which a project program under paragraph (b) of this subsection has been developed to determine the county's ability to participate in the proposed project. The Administrative Office of the Courts may discharge this responsibility by obtaining certification of the county's financial condition from the ***Governor's Office for Local Development***~~[Department for Local Government]~~, under KRS 147A.021(5);
 - (d) Develop a prioritized list, with cost estimates, based on land availability and the considerations required by this section, of proposed court facilities projects, and submit the list to the Chief Justice for approval and to the Court Facilities Standards Committee for informational purposes only. Upon approval by the Chief Justice, the Administrative Office of the Courts shall submit the prioritized list to the Capital Planning Advisory Board, by April 15 of each odd-numbered year, in accordance with KRS 7A.120; and
 - (e) Develop and maintain uniform contracts to be used by local units of government when procuring architectural, construction, financial, or other services relating to court facilities projects authorized by the General Assembly.
- (3) Before the Administrative Office of the Courts submits a budget request for court projects under KRS 48.050, each local unit of government that is expected to participate in financing a requested court project shall enter into a written memorandum of agreement with the Administrative Office of the Courts. Each county with a court project authorized by the 2000 General Assembly shall enter into a written memorandum of agreement with the Administrative Office of the Courts. The agreement shall be developed by the Administrative Office of the Courts, shall specify the rights, duties, and obligations of the local unit of government and the Administrative Office of the Courts relating to the project, and shall be contingent upon the project's authorization by the General Assembly.
 - (4) No contract, and no modification to any contract, relating to the design, financing, or construction of court facilities projects authorized by the General Assembly shall be executed unless first reviewed and approved by the Administrative Office of the Courts.
 - (5) All court facilities projects, beginning with those authorized by the 2000 General Assembly, shall comply with the Kentucky standards for court facilities established under paragraph (f) of subsection (1) of this section. No other standards shall be used.
 - (6) This section shall not affect or apply to any contract executed prior to July 14, 2000.
 - (7) All local units of government or any other entity providing space to the Court of Justice under KRS 26A.100 shall, consistent with the law, comply with the rules of procedure and guidelines established by the Chief Justice and administered by the Administrative Office of the Courts under this section.

Section 12. KRS 39G.020 is amended to read as follows:

- (1) The Kentucky Office of Homeland Security shall identify and maintain a record of all federal homeland security funding, including grants, received in Kentucky. The record shall identify, at a minimum, the specific federal source, the amount, the specific recipient, the intended use of the funding, the actual use, and any unspent amount.
- (2)
 - (a) Not later than September 15 of each year, each department headed by an elected officer, as identified in KRS 12.020 I., each cabinet headed by an appointed officer, as identified in KRS 12.020 II., and each department headed by an appointed officer, as identified in KRS 12.020 III., shall submit to the Kentucky Office of Homeland Security a record of all federal homeland security funding, including grants, received during the state fiscal year starting with the fiscal year ending June 30, 2005. The record shall identify, at a minimum, the specific federal source, the amount, the specific recipient, the intended use of the funding, the actual use, and any unspent amount.
 - (b) Not later than August 1 of each year, each city, county, urban-county, charter county, consolidated local government, and special taxing district shall submit to its area development district a record of all federal homeland security funding, including grants, received during the state fiscal year by the city, county, urban-county, charter county, consolidated local government, special taxing district, or a public

agency thereof, starting with the fiscal year ending June 30, 2005. The record shall identify, at a minimum, the specific federal source, the amount, the specific recipient, the intended use of the funding, the actual use, and any unspent amount.

- (c) Not later than August 15 of each year, each area development district shall group the records required under paragraph (b) of this subsection by county and submit them to the *Governor's Office for Local Development*~~{Department for Local Government}~~.
 - (d) Not later than September 20 of each year, the *Governor's Office for Local Development*~~{Department for Local Government}~~ shall submit the records received under paragraph (c) of this subsection to the Kentucky Office of Homeland Security.
 - (e) Any funds received for the purpose of homeland security shall be monitored by the Kentucky Office of Homeland Security and subject to audit and compliance inspections as directed by the executive director.
- (3) The Kentucky Office of Homeland Security, area development districts, and the *Governor's Office for Local Development*~~{Department for Local Government}~~ shall educate entities that report under this section about their responsibilities under this section. If an entity is late in reporting under this section, the office, an area development district, or the *Governor's Office for Local Development*~~{Department for Local Government}~~ shall remind that entity of its reporting requirements under this section.
 - (4) The Kentucky Office of Homeland Security shall directly notify the chief executive officer of each city, county, urban-county, charter county, and consolidated local government concerning grants for homeland security projects as the grants become available.

Section 13. KRS 42.016 is amended to read as follows:

The following corporate bodies and instrumentalities of the Commonwealth shall be attached to the Office of the Secretary for administrative purposes and staff services:

- (1) State Property and Buildings Commission;
- (2) Kentucky Savings Bond Authority;
- (3)~~{County Officials Compensation Board;~~
- ~~(4)}~~ Kentucky Turnpike Authority;
- ~~(4){(5)}~~ State Investment Commission;
- ~~(5){(6)}~~ Kentucky Housing Corporation;
- ~~(6){(7)}~~ Kentucky Tobacco Settlement Trust Corporation; and
- ~~(7){(8)}~~ Kentucky River Authority.

Section 14. KRS 42.200 is amended to read as follows:

- (1) The "Water Project Interest Rate Buy Down Fund" is hereby created as a special fund in the State Treasury. The fund may receive state appropriations, gifts, grants, and federal funds and shall include earnings from investments of moneys in the fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in this fund shall be continuously appropriated only for the purposes specified in this section.
- (2) The fund shall be used to provide financial assistance to government agencies for the construction of publicly-owned water supply projects located in rural areas of the Commonwealth. In order to qualify for the financial assistance, the governmental agency shall obtain a loan from a bank or combined bank and trust company organized under the laws of this Commonwealth and at an interest rate no greater than two (2) percentage points higher than the current prime rate. The financial assistance provided shall consist of an annual grant to the governmental agency to be made over the life of the loan obtained by the governmental agency for the construction of the publicly-owned water supply project. The amount of the annual grant shall be calculated over the life of the loan to provide to the governmental agency each year the portion of the interest on the loan calculated at a four percent (4%) interest rate. The governmental agency shall be responsible for the payment of the interest on the loan in excess of the four percent (4%) interest rate and for the payment of the principal on the loan.

- (3) The Finance and Administration Cabinet shall administer the fund and may promulgate administrative regulations as necessary to implement the provisions of this section. The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall advise government agencies of the fund and how to apply for moneys from the fund.
- (4) The provisions of this section shall be known and may be cited as the Kentucky Rural Water Act.

Section 15. KRS 42.350 is amended to read as follows:

- (1) The area development fund in the State Treasury shall be administered by the ***Governor's Office for Local Development***~~[Department for Local Government]~~. The fund may receive state appropriations, gifts, grants, and federal funds and shall be disbursed by the State Treasurer upon the warrant of the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~. Any unallotted or unencumbered balances in the fund shall be invested in United States government securities maturing not later than one (1) year from the date of investment and the income from the investments shall be prorated for expenditure for capital projects in area development districts according to the formula provided in KRS 42.370.
- (2) Money in the fund shall be used only for capital projects which contribute to community or industrial development in the Commonwealth, KRS 48.300 and 48.500 notwithstanding. Capital projects eligible for financing out of the fund include and shall be limited to:
 - (a) The construction, reconstruction, renovation, and maintenance of buildings and other improvements to real estate;
 - (b) The acquisition of real property and interests in real property;
 - (c) The purchase of major items of equipment;
 - (d) Industrial site development projects, including land reclamation, clearing, grading, draining, landscaping, and the construction of walkways and fences;
 - (e) The extension and installation of water, gas, sewer, and electrical utilities lines to public facilities and industrial sites;
 - (f) The provision of solid waste management or disposal systems bringing counties into compliance with state or federal law. All expenses incurred in connection with or incidental to the construction or acquisition of a capital project under this section, including architectural, engineering, legal, and other expenses required for the projects may be paid out of the fund. Money in the fund may be used to retire a mortgage or other indebtedness encumbering an eligible capital project made within the preceding five (5) calendar years to secure the repayment of moneys loaned or advanced to finance the construction or acquisition of the project, and may be used in match or in combination with funds obtained from other sources for an eligible capital project. No money shall be expended out of the fund, directly or indirectly, to pay or reimburse the cost of any feasibility study, master plan for any capital improvement development or redevelopment project, the purchase of consumable supplies or any administrative salary, or other operating or capital expense of any area development district, or for the acquisition, construction, reconstruction, renovation, or maintenance of any building or property of schools, state institutions of higher learning, or any road, street, bridge, or highway.
- (3) The board of directors of each area development district shall determine from among the capital project proposals submitted by eligible beneficiary agencies, the capital projects to be proposed to be constructed or acquired out of the fund. The area development districts shall submit to the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~ the capital projects selected for construction or acquisition within the districts. Each project proposal shall include: a detailed description of the project; a statement of the public benefit to be derived from the project; if available, design plans and specifications for the project; an itemized estimate of the cost of the project; a statement of the sources and amounts of funds available from any other source for the construction or acquisition of the project; and other information relating to the proposed capital project as the ***Governor's Office for Local Development***~~[Department for Local Government]~~ may require.

Section 16. KRS 42.355 is amended to read as follows:

- (1) The ***Governor's Office for Local Development***~~(Department for Local Government)~~ shall examine each capital project selected by the area development districts, and when it finds that a proposed project conforms to the requirements of KRS 42.350 to 42.370; that the estimated costs of the project are reasonable; that the costs proposed to be paid from the fund are within the amount available; and that the proposed beneficiary agency will be reasonably able to finance the operation and maintain the capital project during its estimated useful life, the commissioner of the ***Governor's Office for Local Development***~~(Department for Local Government)~~ shall approve it. If the ***Governor's Office for Local Development***~~(Department for Local Government)~~ determines that a capital project proposal does not conform to the requirements of KRS 42.350 to 42.370, that the estimated costs of the project are excessive or unreasonable in light of the public benefit to be derived from the project, or the unencumbered balance in the fund available for expenditure in the area development district is insufficient to pay the costs of the project, or the part thereof proposed to be paid out of the fund, or the beneficiary agency cannot reasonably finance the operation of or maintain the capital project during its estimated useful life, the project proposal shall be disapproved by the ***Governor's Office for Local Development***~~(Department for Local Government)~~. The final decision to either approve or disapprove any project proposal shall be made no later than forty-five (45) days following official submittal of a complete proposal by the area development district, and the area development district shall be accordingly notified at that time.
- (2) The commissioner of the ***Governor's Office for Local Development***~~(Department for Local Government)~~ may make direct grants in aid of money out of the fund to any beneficiary agency for the construction or acquisition of any approved capital project. When a direct grant in aid has been made to a beneficiary agency, all contracts awarded for the purchase of materials, supplies, equipment, or services, except professional and technical services, required for the construction or acquisition of the project shall be awarded to the lowest and best bidder in the discretion of the beneficiary agency after public advertisement as required by KRS Chapter 424 or other applicable law. All contracts awarded under this section for the construction, reconstruction, or renovation of a building or other improvement to real estate shall be deemed contracts for public works within the meaning of KRS 341.317 and KRS Chapter 376 and other applicable statutes. All beneficiary agencies receiving a direct grant in aid under this subsection shall keep and maintain complete and accurate records of accounts of all expenditures of the grant moneys which shall be subject to audit by the Commonwealth for a period of five (5) years after completion of the capital project. Beneficiary agencies shall complete approved capital projects within a reasonable period of time as determined by the ***Governor's Office for Local Development***~~(Department for Local Government)~~. Upon completion of capital projects, beneficiary agencies shall submit project completion reports to the ***Governor's Office for Local Development***~~(Department for Local Government)~~ as prescribed by the ***Governor's Office for Local Development***~~(Department for Local Government)~~ and containing documents and information as may be necessary to determine compliance with KRS 42.350 to 42.360 and other applicable statutes and administrative regulations. Beneficiary agencies shall be liable to repay to the fund any granted funds for failure to submit full project completion reports within a reasonable period of time or for expenditure of granted funds in violation of statutes and regulations. No additional area development funds may be approved until compliance, except at the discretion of the commissioner of the ***Governor's Office for Local Development***~~(Department for Local Government)~~. Any grant moneys not required after all of the costs of the capital project have been paid by the beneficiary agency shall be promptly returned to the Commonwealth for reallocation for expenditure for other capital projects in the area development district to which the funds had been originally allocated.
- (3) No capital project shall be constructed under KRS 42.350 to 42.370 except upon land to which (a) the Commonwealth, a political subdivision of the Commonwealth, or the beneficiary agency of the capital project has a good and marketable title, free of encumbrances, or (b) the beneficiary agency of the project has the right to the uninterrupted use, occupancy, and possession for a period longer than the estimated useful life of the capital project; provided nothing herein shall prohibit the construction or renovation of public buildings on land with an existing encumbrance to secure payment of funds obtained for the acquisition or improvement of said land. Each beneficiary agency shall execute and deliver to the Commonwealth its written assurances, which shall be binding on the agencies' successors and assigns, guaranteeing that during its estimated useful life, the capital project shall be operated and maintained for public purposes and pledging that no mortgage or other encumbrances shall be placed against any capital project wholly financed out of the fund, except industrial development projects, for the breach of which assurances the Commonwealth shall have right of entry to the capital project and the beneficiary agency, or its successors and assigns, shall forthwith convey the title to the capital project to the Commonwealth. Similar assurances shall be executed and delivered to the Commonwealth by the beneficiary agencies of capital projects financed in part out of the fund and in part from other sources, except that when additional funding is derived from the issuance and sale of revenue bonds or

under other statutorily authorized financing methods, to secure the repayment of which funds a statutory mortgage lien is granted in favor of any person or group of persons, the capital project may be encumbered to the extent authorized or required by the law under which the financing method was undertaken; nor shall anything in this section prohibit the encumbrance of any real property located within an industrial park or constituting an industrial site, developed or improved as a capital project under KRS 42.350 and this section, by any person, firm, company, partnership, or corporation to which the property has been conveyed, to obtain financing for the construction upon the property of industrial and commercial buildings. The written assurances provided by beneficiary agencies under this section shall be lodged for recording and recorded in the office of the county clerk of the county in which the proposed project shall be located.

Section 17. KRS 42.360 is amended to read as follows:

The commissioner of the ***Governor's Office for Local Development***~~{Department for Local Government}~~ shall promulgate rules and regulations governing submission and approval of proposed capital projects, the expenditure of moneys from the fund, and the designation of beneficiary agencies involved in capital projects as shall be appropriate to the implementation of KRS 42.350 and 42.355.

Section 18. KRS 42.455 is amended to read as follows:

- (1) There is established within the ***Governor's Office for Local Development***~~{Department for Local Government}~~ a Local Government Economic Assistance Program to consist of a system of grants to local governments to improve the environment for new industry and to improve the quality of life for the residents.
- (2) Grants obtained under this program shall be used for priority expenditures. Thirty percent (30%) of all moneys in the fund shall be spent on the coal haul road system as described in subsection (7) of this section. The remaining seventy percent (70%) of the fund shall be spent on priority categories limited to the following, but in no event shall grants obtained under this program be used for expenses related to administration of government:
 - (a) Public safety, including law enforcement, fire protection, ambulance service, and other related services;
 - (b) Environmental protection, including sewage disposal, sanitation, solid waste, and other related programs;
 - (c) Public transportation, including mass transit systems, streets, and roads;
 - (d) Health;
 - (e) Recreation;
 - (f) Libraries and educational facilities;
 - (g) Social services for the poor, the elderly, and individuals with disabilities;
 - (h) Industrial and economic development;
 - (i) Vocational education;
 - (j) Workforce training; and
 - (k) Secondary wood industry development.
- (3) The use of entitlement funds for repayment of debt as related to long-term bond issues is permissible as long as the revenue from the bond issues is expended on priority categories.
- (4) Grants obtained under this program may be used as local portion to secure federal programs as long as program expenditures are in the priority category area. Interest earned on funds received by local units of government shall be considered available for use by the local unit of government in the priority expenditure categories.
- (5) The ***Governor's Office for Local Development***~~{Department for Local Government}~~ shall be responsible for the promulgation of rules and regulations necessary to implement the grants programs authorized by this section.
- (6) The ***Governor's Office for Local Development***~~{Department for Local Government}~~ shall assure that a public hearing is held on the expenditure of funds received under KRS 42.450 to 42.495. Advertisement of the public hearing shall be published at least once but may be published two (2) or more times, provided that one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the scheduled date

of the public hearing. The ***Governor's Office for Local Development***~~[Department]~~ shall submit an annual report to the Governor indicating how the grants were used and an evaluation of the program's effectiveness in improving the economy of the units of government receiving assistance.

- (7) On or before August 15, 1980, and each year thereafter, the Transportation Cabinet shall publish and furnish to the ***Governor's Office for Local Development***~~[Department for Local Government]~~ a directory, including supporting maps and other documents, designating the official state coal road system in coal impact and coal producing counties which shall include all public highways, roads, and streets over which quantities of coal, sufficient to significantly affect the condition and state of repair of highways, roads, and streets, have been transported in the immediately preceding fiscal year. The cabinet shall further publish the total county mileage of the official state coal road system and the total ton/miles within each coal impact and coal producing county for said preceding fiscal year.
- (8) Every person shipping or transporting coal, and every carrier for hire or common carrier hauling coal over the public highways, roads, and streets shall file with the Transportation Cabinet such information and at intervals as the ***cabinet***~~[Department]~~ shall designate by regulation duly adopted for the purpose of identifying those highways, roads, and streets comprising the coal haul road system and the quantities of coal transported thereon, in order that the cabinet can accurately calculate total ton/miles within each coal impact and coal producing county.
- (9) The Department of Revenue shall make available to the Transportation Cabinet coal severance and processing tax data for use in verifying and supplementing the information furnished under the provisions of subsection (8) of this section. The information shall be furnished in such a manner as to conceal the identity of individual taxpayers; if the data cannot be furnished without revealing the identity of individual taxpayers, it shall be withheld.

Section 19. KRS 42.4588 is amended to read as follows:

- (1) (a) A Local Government Economic Development Program is established to consist of a system of grants to counties to attract new industry. Grants from funds provided for in KRS 42.4592(1)(a) and (b) shall be administered by the ***Governor's Office for Local Development***~~[Department for Local Government]~~. Grants from funds provided for in KRS 42.4592(1)(c) shall be administered by the Kentucky Economic Development Finance Authority.
- (b) All references in this section to the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~ relate only to the grants or industrial development projects funded through KRS 42.4592(1)(a) and (b). All references in this section to the secretary of the Cabinet for Economic Development or the Kentucky Economic Development Finance Authority relate only to grants or industrial development projects funded through KRS 42.4592(1)(c).
- (2) Grants obtained under this program shall be used for:
 - (a) Industrial development projects if an industrial firm has agreed with the local government, to the satisfaction of the Kentucky Economic Development Finance Authority or the ***Governor's Office for Local Development***~~[Department for Local Government]~~, to develop, in conjunction with the industrial development project, manufacturing, processing, assembling, or other facilities approved by the secretary of the Cabinet for Economic Development or the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~;
 - (b) Industrial development projects if the secretary of the Cabinet for Economic Development or the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~ finds that the project is necessary for the creation of an environment for new industry in order to obtain an agreement from an industrial firm to develop manufacturing, processing, assembling, or other facilities approved by the secretary of the Cabinet for Economic Development or the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~; and
 - (c) Debt service for industrial development projects, as defined in subsection (2)(a) and (b) of this section, or for facilities approved by the secretary of the Cabinet for Economic Development or the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~ under the provisions of subsection (3) of this section.
- (3) The secretary of the Cabinet for Economic Development or the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~ may approve facilities, other than manufacturing,

processing, or assembling facilities, for industrial development projects when the secretary or the commissioner finds that the facility will add value to a product. Value-added facilities shall include data processing, telecommunication, and distribution facilities, but shall not include retail facilities or coal mining, coal processing, or coal transportation facilities. The secretary or the commissioner may also approve privately owned facilities for transient lodging and recreation where the secretary *or commissioner* finds that the cost of the recreation component of the facility is equal to, or greater than, the cost of the lodging component of the facility. The criteria for approval of applications for grants provided for in subsection (10)(a), (b), and (c) of this section shall be paramount in the case of lodging and recreational facilities.

- (4) Applications for grants from funds provided for in KRS 42.4592(1)(a) and (b) shall be made by the legislative bodies of one (1) or more counties with accounts in the local government economic development fund. Applications for grants from funds provided for in KRS 42.4592(1)(c) shall be made by the legislative bodies of two (2) or more counties with accounts in the local government economic development fund. No grant shall be awarded without application for a grant.
- (5) A grant may be awarded for an industrial development project located in a county that does not have an account in the local government economic development fund, if the secretary of the Cabinet for Economic Development or the commissioner of the *Governor's Office for Local Development*~~Department for Local Government~~ finds that the industrial development project may be reasonably expected to create jobs for residents of the local unit or units of government applying for the grant. Application for the grant shall be made by the legislative bodies of one (1) or more counties with accounts in the local government economic development fund.
- (6) An industrial development project may include legal, accounting, engineering, and marketing expenses for a regional industrial park, in addition to the activities set forth in subsection (11)(a) of this section.
- (7) Grants awarded from funds provided for in KRS 42.4592(1)(a) and (b) shall not exceed the total balance of the accounts of the applicant counties at the time of the award of the grant.
- (8) Grants awarded under the provisions of subsection (2)(c) of this section may be for a period not to exceed the current biennium of the Commonwealth, and shall be limited to an amount not to exceed the amount estimated to be allocated to the applicant county or counties for the current biennium under the provisions of KRS 42.4592(1)(a) and (b).
- (9) Approval of grant applications shall be by the secretary of the Cabinet for Economic Development or the commissioner of the *Governor's Office for Local Development*~~Department for Local Government~~. Award of grants from funds provided for in KRS 42.4592(1)(c) shall be by the Kentucky Economic Development Finance Authority. Award of grants from funds provided for in KRS 42.4592(1)(a) and (b) shall be by the commissioner of the *Governor's Office for Local Development*~~Department for Local Government~~.
- (10) Criteria for approval of applications and the award of grants to be considered, if applicable, shall include:
 - (a) The number of jobs to be created or preserved, directly or indirectly, by the industrial development project;
 - (b) Payrolls, and the taxes generated, both at the state and local levels, by the industrial development project and taxes generated by the employment created or preserved by the industrial development project;
 - (c) The size, nature, and cost of the industrial development project, including the prospect of the industrial development project providing long-term jobs in enterprises consistent with the changing economies of the affected local units of government;
 - (d) The needs, and degree of needs, of the local units of government which will be affected by the industrial development project;
 - (e) The needs of any industrial firm benefiting from the industrial development project;
 - (f) The amount and kind of assistance, if any, available to an industrial firm from other government agencies through tax exemption or abatement, financing assistance through industrial development bonds, and otherwise, with respect to the industrial development project;
 - (g) The amount of capital made available to the facility by lenders and by the industrial firm; and

(h) The economic feasibility of the facility.

(11) For purposes of this section:

- (a) "Industrial development project" includes the acquisition of any real estate and the construction, acquisition, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of the real estate for conveyance to or lease to industrial firms to be used for manufacturing, processing, or assembling purposes, 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, communication, and other similar facilities; off-site construction of utility extensions to the boundaries of the real estate; construction and installation on the real estate of the industrial firm of buildings, including buildings to be used for worker training and education; rail facilities; roads; sidewalks; curbs; other improvements to the real estate necessary to its manufacturing, processing, assembling, or other approved use by industrial entities; workforce training; and job development incentive grants;
- (b) "Industrial firm" means any corporation, limited liability company, limited liability partnership, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, assembling, or other approved facility on the site of an industrial development project financed pursuant to this section;
- (c) "Job development incentive grant" means an award to a county of funds from its account administered by the ***Governor's Office for Local Development***~~[Department for Local Government]~~ pursuant to KRS 42.4592(1)(a) and (b) for the use by the county to encourage job development for those industrial development projects located in that county which create at least twenty-five (25) new full-time jobs held by Kentucky residents who receive a minimum wage of at least one hundred thirty percent (130%) of the federal minimum wage. Each job development incentive grant shall be limited to five thousand dollars (\$5,000) for each job created which fulfills the requirements of this subsection. The industrial firm receiving the job development incentive grant shall pay its employees at the project site an average wage equal to or greater than one hundred fifty percent (150%) of the federal minimum wage and shall invest at least ten thousand dollars (\$10,000) per new job created. After a fiscal court has received authorization for the job development grant by the ***Governor's Office for Local Development***~~[Department for Local Government]~~, the county, the industrial firm, and the ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall enter into an agreement committing the grant funds to be disbursed at such time as the industrial firm certifies the authenticity of the following information to be delivered to the county:
 - 1. The industrial firm has made at least the minimum investment required;
 - 2. At least twenty-five (25) new full-time Kentucky jobs have been created at the project site by the industrial firm;
 - 3. No employee at the project site is paid a salary by the industrial firm which is less than one hundred thirty percent (130%) of the federal minimum wage;
 - 4. The employees at the project site are paid an average wage by the industrial firm at least equal to one hundred fifty percent (150%) of the federal minimum wage;
 - 5. Each employee hired for the project by the industrial firm shall have worked on a full-time basis at the minimum wages described in this section at least twelve (12) full consecutive months at the site prior to any grant funds disbursement; and
 - 6. No job created by the industrial firm after twenty-four (24) months from the date of the first eligible hire at the project site shall be considered for the grant.

If the county is satisfied the information provided is accurate and qualifies the industrial firm for the job development incentive grant as described in the agreement, it shall forward the certified information to the ***Governor's Office for Local Development***~~[Department for Local Government]~~ which shall make the job development grant disbursement upon sufficient evidence that all terms of the agreement have been met; and

- (d) "Regional industrial park" means an industrial development project authorized for a grant award by the Kentucky Economic Development Finance Authority for a minimum of three (3) counties eligible for

grant funds provided for in KRS 42.4592(1)(c), which coalition may include a county as approved under subsection (5) of this section.

- (12) Findings by the secretary of the Cabinet for Economic Development or the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~, provided for in subsections (2)(b), (3), and (5) of this section, shall be made in writing to the affected counties, the Governor, and the Legislative Research Commission.
- (13) By October 1 of each odd-numbered year, the secretary of the Cabinet for Economic Development and the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall each provide, in writing, to the Governor and the Legislative Research Commission a listing of all applications for grants received pursuant to this section subsequent to the last report, indicating which applications were approved or disapproved, with the reason for disapproval when the decision was to disapprove, and a listing of all grants awarded, with the amount of the award, the recipient county, and the related industrial development project.

Section 20. KRS 42.4592 is amended to read as follows:

- (1) Moneys remaining in the local government economic development fund following the transfer of moneys to the local government economic assistance fund provided for in KRS 42.4585 and following the transfer of moneys to the secondary wood products development fund provided for in KRS 42.4586 shall be allocated as follows:
 - (a) Thirty-three and one-third percent (33-1/3%) shall be allocated to each coal producing county on the basis of the ratio of total tax collected in the current and preceding four years on coal severed in each respective county to the total tax collected statewide in the current and four (4) preceding years.
 - (b) Thirty-three and one-third percent (33-1/3%) shall be allocated quarterly to each coal producing county on the basis of the following factors, which shall be computed for the current and four (4) preceding years, and which shall be equally weighted:
 - 1. Percentage of employment in mining in relation to total employment in the respective county;
 - 2. Percentage of earnings from mining in relation to total earnings in the respective county; and
 - 3. Surplus labor rate.
 - (c) Thirty-three and one-third percent (33-1/3%) shall be reserved for expenditure for industrial development projects benefiting two or more coal producing counties. For purposes of this paragraph, "coal producing county" shall mean a county which has produced coal in the current or any one of the four (4) preceding years.
- (2)
 - (a) For purposes of paragraph (b) of subsection (1) of this section, "percentage of employment in mining" and "percentage of earnings from mining" shall be the percentages published for the latest available five (5) year period by the Bureau of Economic Analysis in the United States Department of Commerce; "surplus labor rate" shall be the rate published for the latest available five (5) year period by the Office of Employment and Training in the Education Cabinet, as provided in paragraph (b) of this subsection.
 - (b)
 - 1. Each year the Office of Employment and Training shall estimate surplus labor for each county and for the Commonwealth, and shall annually publish an estimate of the surplus labor rate for each county and the Commonwealth.
 - 2. The estimate of surplus labor for each county and for the Commonwealth shall be made using the best practical method available at the time the estimates are made. In determining the method to be adopted, the Office of Employment and Training may consult with knowledgeable individuals, including but not limited to the Office of the United States Bureau of Labor Statistics, state and national researchers, state and local officials, and staff of the Legislative Research Commission. The description of the method used to estimate surplus labor shall be reported in each annual publication provided for in subparagraph 1. of this paragraph.
 - 3. For purposes of this section, "surplus labor" means the total number of residents who can be classified as unemployed or as discouraged workers, and "surplus labor rate" means the percentage of the potential civilian labor force which is surplus labor.

- (3) The funds allocated under the provisions of paragraphs (a) and (b) of subsection (1) of this section shall retain their identity with respect to the county to which they are attributable, and a separate accounting of available moneys within the fund shall be maintained for the respective counties. Accounting for funds allocated under the provisions of this section shall be by the ***Governor's Office for Local Development***~~[Department for Local Government]~~.

Section 21. KRS 42.4595 is amended to read as follows:

The ***Governor's Office for Local Development***~~[Department for Local Government]~~ may promulgate administrative regulations to implement the provisions of KRS 42.4582, 42.4585, 42.4592, and KRS 42.4588 as it relates to KRS 42.4592(1)(a) and (b). The Cabinet for Economic Development or the Kentucky Economic Development Finance Authority may promulgate administrative regulations to implement the provisions of KRS 42.4588 as it relates to KRS 42.4592(1)(c).

Section 22. KRS 42.460 is amended to read as follows:

Except as provided in KRS 91A.040(4)(b), any assistance granted under KRS 42.450 to 42.495 shall include an agreement that an independent annual audit shall be conducted and that the audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit and certification of compliance shall be forwarded to the ***Governor's Office for Local Development***~~[Department for Local Government]~~, in the case of assistance granted from the local government economic assistance fund or the local government economic development fund as allocated in KRS 42.4592(1)(a) and (b), or to the Cabinet for Economic Development and the Kentucky Economic Development Finance Authority, in the case of assistance granted from the local government economic development fund, within eighteen (18) months after the end of the fiscal year.

Section 23. KRS 42.472 is amended to read as follows:

Moneys from tar sands distributed to counties under KRS 42.470(2) shall be used for economic development purposes as approved by the ***Governor's Office for Local Development***~~[Department for Local Government]~~.

Section 24. KRS 42.480 is amended to read as follows:

- (1) On or before July 1, 1992, and each year thereafter, the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall provide the Cabinet for Economic Development, the Kentucky Economic Development Finance Authority, and the legislative body of each local government eligible for funds under the provisions of KRS 42.450 to 42.495, an estimate of the funds that will be allocated to the local government for fiscal year 1992-93, and each year thereafter.
- (2) On or before the fifteenth of the first month of a quarter, the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall cause to be remitted to the legislative bodies of the local governments eligible for funds from the local government economic assistance fund, the funds allocated to the respective local governments for the prior quarter; except that the remittance for the last quarter of a fiscal year shall be made after the close of the fiscal year accounting records, and shall be adjusted to provide the balance of the annual allocation due the local government.

Section 25. KRS 43.090 is amended to read as follows:

- (1) Immediately upon completion of each audit and investigation, except those provided for in KRS 43.070, the Auditor shall prepare a report of his findings and recommendations. He shall furnish one (1) copy of the report to the head of the agency to which the report pertains, one (1) copy to the Governor, one (1) copy to the secretary of the Finance and Administration Cabinet, one (1) copy to the Legislative Research Commission and one (1) copy to the state librarian. The agency to which an Auditor's draft report pertains shall respond in writing to any adverse or critical audit findings and to any recommendations contained in the draft report within fifteen (15) days of receipt of the draft report. The Auditor shall distribute the agency's response to those entitled by this subsection to a copy of the audit report. Within sixty (60) days of the completion of the final audit report, the agency to which an Auditor's report pertains shall notify the Legislative Research Commission and the Auditor of the audit recommendations it has implemented and of the audit recommendations it has not implemented. The agency shall state the reasons for its failure to implement any recommendation made in the final audit report. The Auditor shall prepare and transmit to each member of the General Assembly, by December 15 immediately preceding the convening of each regular session of the General Assembly, a printed report of his activities, summarizing the findings and recommendations in his report on each audit or investigation made since the last preceding biennial report to the General Assembly listing, by state agency, the audit recommendations that have not been implemented and the reason(s) given by

state agencies for nonimplementation, and presenting such other findings and recommendations as he sees fit to make. He shall file a copy of this report with the Governor and five (5) copies with the state librarian. All audit reports shall be public documents to which taxpayers shall have access.

- (2) The Auditor shall, within a reasonable time after the examination of each county as provided in KRS 43.070, make a written report to the Governor, the General Assembly, the Attorney General, ~~the County Officials' Compensation Board~~, the state librarian and to the fiscal court and county attorney of the county examined, calling attention in specific terms to any mismanagement, misconduct, misapplication or illegal appropriation or extravagant use of money received or disbursed by any officer of the county examined. In addition, said report shall be sent to a newspaper having general circulation in the county examined and the letter of transmittal accompanying the report shall be published in said newspaper in accordance with the provisions of KRS Chapter 424.

Section 26. KRS 44.020 is amended to read as follows:

- (1) Within three (3) working days after the first and fifteenth of each month, the sheriff, or any other public official with a claim payable from the State Treasury for duties performed in any court of the Court of Justice, shall make out the claim and have it certified by the judge of the court as allowable for payment, and transmit the list to the **Governor's Office for Local Development**~~Department for Local Government~~. The claim approved by the judge of the court shall serve as an order of allowance notwithstanding any statutory provision to the contrary. The **Governor's Office for Local Development**~~Department for Local Government~~ shall keep a separate record of all claims allowed in each county, noting the number and amount of each warrant issued for the payment of the claims.
- (2) The order of any court authorized by law to approve and allow fee-bills, settlements, credits, charges, and other claims against the State Treasury shall not be treated as a judgment, or made conclusive against the state, but shall only be regarded as prima facie evidence of the correctness and legality of the fee-bill, settlement, credit, charge, or claim. The **Governor's Office for Local Development**~~Department for Local Government~~, if it believes the fee-bill, settlement, credit, charge, or claim to be fraudulent, erroneous, or illegal, may, upon the advice of the Attorney General, refuse to pay and may contest the claim in the Franklin Circuit Court, which shall have exclusive jurisdiction of all actions against the **Governor's Office for Local Development**~~Department for Local Government~~ to compel the payment of claims against the State Treasury.

Section 27. KRS 45.031 is amended to read as follows:

- (1) Any department, board, commission, agency, advisory council, interstate compact, corporate body, or instrumentality of the Commonwealth of Kentucky applying for federal funds, aids, loans, or grants shall file a summary notification of the intended application with the **Governor's Office for Local Development**~~Department for Local Government~~ in accordance with the existing A-95 procedures.
- (2) When as a condition to receiving federal funds, the Commonwealth of Kentucky is required to match the federal funds, a statement shall be filed with the notice of intent or summary of the application stating:
 - (a) The amount and source of state funds needed for matching purposes;
 - (b) The length of time the matching funds shall be required;
 - (c) The growth of the program;
 - (d) How the program will be evaluated;
 - (e) What action will be necessary should the federal funds be canceled, curtailed, or restricted; and
 - (f) Any other financial and program management data required by the Finance and Administration Cabinet or by law.
- (3) Any application for federal funds, aids, loans, or grants which will require state matching or replacement funds at the time of application or at any time in the future, must be approved by the secretary of the Finance and Administration Cabinet, the Legislative Research Commission, and the Chief Justice for their respective branches of government or their designated agents prior to its filing with the appropriate federal agency. Any application for federal funds, aids, loans, or grants which will require state matching or replacement funds at the time of application or at any time in the future, when funds have not been appropriated for that express purpose, must be approved by the General Assembly, if in session. When the General Assembly is not in

session, the application shall be reported to and reviewed by the Interim Joint Committee on Appropriations and Revenue, as provided by subsection (4) of KRS 48.500.

- (4) When any federal funds, aids, loans, or grants are received by any department, board, commission or agency of the Commonwealth of Kentucky, a report of the amount of funds received shall be filed with the Finance and Administration Cabinet; and this report shall specify the amount of funds which would reimburse an agency for indirect costs as provided for under OMB Circular A-87.
- (5) The secretary of the Finance and Administration Cabinet may refuse to issue his warrant for the disbursement of any state or federal funds from the State Treasury as the result of any application which is not approved as provided by this section, or in regard to which the statement or reports required by this section were not filed.
- (6) The secretary of the Finance and Administration Cabinet shall be responsible for the orderly administration of this section and for issuing the appropriate guidelines and regulations from each source of fund used.

Section 28. KRS 45A.023 is amended to read as follows:

- (1) Notwithstanding any other provision of law to the contrary, the ***Governor's Office for Local Development***~~[Department for Local Government]~~, the Department of Military Affairs, and the Kentucky Office of Homeland Security may enter into multiyear contracts, memoranda of agreement, memoranda of understanding, grant agreements, or any other similar documents that exceed the biennium in which they are made for projects that are funded solely through federal grant money.
- (2) All documents entered into in accordance with subsection (1) of this section shall contain a provision stating that the contract funding may be discontinued by the General Assembly in a subsequent budget.

Section 29. KRS 45A.050 is amended to read as follows:

- (1) Except as provided in KRS 45A.800 to 45A.835 and KRS Chapters 175, 176, 177, and 180, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction now vested in or exercised by any state agency under the several statutes relating thereto, are hereby transferred to the secretary of the Finance and Administration Cabinet as provided in this code, subject to the provisions of subsection (2) of this section.
- (2) Unless otherwise ordered by the secretary of the Finance and Administration Cabinet, the acquisition of the following shall not be required through the Finance and Administration Cabinet:
 - (a) Works of art for museum and public display;
 - (b) Published books, maps, periodicals, and technical pamphlets; and
 - (c) Services of visiting speakers, professors, and performing artists.
- (3) The Finance and Administration Cabinet shall include in all state agency price contracts for the purchase of materials or supplies a provision that, as approved by the secretary of the Finance and Administration Cabinet, any political subdivision, including cities of all classes, counties, school districts, or special districts, may participate in these contracts to the same extent as the Commonwealth. Any political subdivision may purchase materials and supplies in accordance with a contract for supplies and materials entered into by the Finance and Administration Cabinet for the Commonwealth, including those contracts negotiated by the cabinet with vendors who maintain a General Services Administration price agreement as provided in subsection (8) of KRS 45A.045. Political subdivisions of the Commonwealth must comply with other provisions of the Kentucky Revised Statutes which require purchase by competitive bidding, before participating in the contract, unless the state contract has been let by competitive bidding, or the contract was negotiated as provided in subsection (8) of KRS 45A.045.
- (4) The Finance and Administration Cabinet shall inform the ***Governor's Office for Local Development***~~[Department for Local Government]~~, which shall then inform the appropriate purchasing agent of each political subdivision interested in participating under this section, of all state agency contracts in effect between the Commonwealth and vendors.
- (5) The secretary of the Finance and Administration Cabinet shall promulgate administrative regulations necessary for the implementation of this section and necessary to provide that the Commonwealth be reimbursed for any additional expenses incurred by the Commonwealth in allowing political subdivisions to participate in contracts with vendors.

- (6) The Finance and Administration Cabinet shall comply with all provisions relating to the methods of purchasing in the Kentucky Revised Statutes. This section is not intended to repeal or otherwise affect any provision of the Kentucky Revised Statutes regarding purchasing methods of the Finance and Administration Cabinet.

Section 30. KRS 45A.310 is amended to read as follows:

- (1) All payments received by a supplying public purchasing unit from any other public purchasing unit or foreign purchasing activity shall be available or appropriated to the supplying public purchasing unit to defray the cost of the services provided.
- (2) Where the public purchasing unit or foreign purchasing activity administering a cooperative purchase complies with the requirements of this code, any public purchasing unit participating in such a purchase shall be deemed to have complied with this code.
- (3) Where the public purchasing unit or foreign purchasing activity administering a cooperative purchase does not follow this code, then the purchasing officer of a state public purchasing unit must determine, in writing, that he has examined the procurement system of the public purchasing unit or foreign purchasing activity administering the purchase, and has found that the proposed method of purchase substantially meets the requirements of this code.
- (4) The ***Governor's Office for Local Development***~~{Department for Local Government}~~ shall collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, or construction being procured or used by state public purchasing units. The ***Governor's Office for Local Development***~~{Department for Local Government}~~ may also collect this information from local public purchasing units. The ***Governor's Office for Local Development***~~{Department for Local Government}~~ may make available all such information to any public purchasing unit upon request.
- (5) Nothing in KRS 45A.295 to 45A.320 shall be deemed to require a local public purchasing unit to comply with any other provision of KRS Chapter 45A.

Section 31. KRS 46.010 is amended to read as follows:

- (1) The ***Governor's Office for Local Development***~~{Department for Local Government}~~ shall prescribe and keep in operation a uniform system of accounting and reporting on the receipt, use and handling of all public funds, other than taxes, due and payable to the state from county, district, and other local officers and agencies.
- (2) The system so adopted shall require each county treasurer, and each county officer who receives or disburses state funds, to keep an accurate account of receipts and disbursements, showing a daily balance of receipts and disbursements.
- (3) The system shall require all county officers handling state funds, other than taxes, to make an annual report to the ***Governor's Office for Local Development***~~{Department for Local Government}~~, showing receipts and disbursements, and to make other financial statements as the ***Governor's Office for Local Development***~~{Department for Local Government}~~ requires.
- (4) The ***Governor's Office for Local Development***~~{Department for Local Government}~~, subject to the approval of the Governor, may from time to time change the system, or any book, report, form, or record provided for by the system, whenever in its opinion a change is necessary in order to conform to existing conditions.

Section 32. KRS 46.020 is amended to read as follows:

The ***Governor's Office for Local Development***~~{Department for Local Government}~~ shall prepare, and shall cause to be printed and paid for in the same manner as other books, blanks, and records for counties and county officers, all books, blanks, and records necessary for the system of uniform accounting established under KRS 46.010. The ***Governor's Office for Local Development***~~{Department for Local Government}~~ shall deliver to each county, district, or other local officer charged with the duty of collecting, disbursing, or handling state funds the books, blanks, and records as are necessary for that officer. Each county, district, or other local officer receiving the books, blanks, or records shall use them in the performance of his duties with reference to the handling and disbursing of state funds. Any of these books, blanks, or records used by state officers or employees shall be printed and paid for in the same manner as other state printing.

Section 33. KRS 46.990 is amended to read as follows:

- (1) Any county or district officer authorized by law to make collections of funds for the state who fails or refuses to pay over to the state the funds so collected at the time he is required by law to report the collections to any state department shall be required to pay a penalty of ten percent (10%) on all funds not so paid.
- (2) Any officer who fails or neglects to perform any duty required of him by subsection (1) of KRS 46.030 shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for each offense.
- (3) Any officer who fails to use any book, blank or record required to be used under KRS 46.020, or who willfully refuses to make any report required by the ***Governor's Office for Local Development***~~[Department for Local Government]~~ under the provisions of KRS 46.010 or 46.020, shall be subject to indictment in the Franklin Circuit Court, and upon conviction shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for each offense.

Section 34. KRS 48.810 is amended to read as follows:

Each program cabinet, the ***Governor's Office for Local Development***~~[Department for Local Government]~~, the Department of Military Affairs, and the Commonwealth Office of Technology shall develop and submit a four (4) year strategic plan to meet the broad goals outlined by the Governor, and shall submit an electronic copy of the full plan and an electronic copy of a brief summary of that plan to the state budget director, the secretary of the Executive Cabinet, and the Legislative Research Commission with each biennial budget request.

- (1) Each strategic plan shall include, but not be limited to:
 - (a) A statement of the cabinet or administrative entity's value, vision, and mission;
 - (b) A statement of how the cabinet or administrative entity's strategic plan is aligned with the Governor's goals and linked to the budget request and the six (6) year capital plan of the cabinet or administrative entity;
 - (c) A brief summary of a situation analysis conducted by the program cabinet or administrative entity;
 - (d) Identification of measurable goals for the next four (4) years;
 - (e) Specification of objectives to meet the stated goals;
 - (f) Identification of performance indicators to be used to measure progress toward meeting goals and objectives; and
 - (g) A progress report providing data and information on the performance indicators set forth in the program cabinet or administrative entity's most recent strategic plan.
- (2) On or before September 1 of each even-numbered fiscal year, program cabinets and administrative entities which have submitted strategic plans in the previous fiscal year shall submit a progress report to the Office of the State Budget Director, or its designee, which provides data and information regarding the progress the program cabinet or entity has made toward meeting its goals as measured by performance indicators set forth in the cabinet's or entity's most recent strategic plan.
- (3) The state budget director shall designate an entity to develop and implement a methodology for strategic planning and progress reporting for use by program cabinets and administrative entities submitting strategic plans and progress reports pursuant to this section. The entity designated by the state budget director shall develop and make available a training course in strategic planning that is appropriate for and targeted to state government managers, and shall make that training course available to state managers and their designees who have responsibility for the completion of a strategic plan as required by this section.
- (4) The Commonwealth Office of Technology shall maintain uniform electronic strategic plan and progress report submission forms and a procedure that allows all plans and progress reports to be entered into an electronic database that is searchable by interested parties. The database shall be developed and maintained in a form that complies with all provisions of KRS 48.950, 48.955, and 48.960. The Commonwealth Office of Technology shall develop and maintain a program to provide public access to submitted plans and progress reports.

Section 35. KRS 64.050 is amended to read as follows:

- (1) When the term of any county clerk in counties of seventy-five thousand (75,000) population or over expires, or he dies or resigns, or is removed from office, he or his personal representative, trustee or committee, as the case may be, shall at once deliver to his successor in office all accounts, claims and fees due him in his official capacity. The successor shall have the fees, claims and accounts collected, or the ***Governor's Office for Local***

Development~~[Department for Local Government]~~ may, in its discretion, when said accounts, fees and claims are so delivered to the successor, appoint a person to collect them. If a collector is appointed, the successor shall at once, or when demanded by the collector, deliver to him all accounts, fees and claims uncollected. The successor or collector, as the case may be, shall, every sixty (60) days after receiving the accounts, fees, and claims, report to the **Governor's Office for Local Development**~~[Department for Local Government]~~, under oath, the amount collected thereon, and at the same time pay to the **Governor's Office for Local Development**~~[Department for Local Government]~~ the amount so collected, and shall continue to so report for three (3) years, unless the accounts, fees and claims are sooner collected.

- (2) The **Governor's Office for Local Development**~~[Department for Local Government]~~ shall, upon each payment, draw a warrant on the State Treasurer in favor of the person collecting, for an amount equal to twenty percent (20%) of the amount so paid in, which shall be the full compensation allowed for the collection.
- (3) If the amount paid to any clerk during his term or incumbency was not sufficient to pay the salaries and office expenses of the clerk, the **Governor's Office for Local Development**~~[Department for Local Government]~~ shall, out of the money collected and paid in as provided in subsection (1) of this section, pay to the clerk, or to the person entitled to receive the same, an amount sufficient to supply the deficit due for salaries and expenses, not exceeding seventy-five percent (75%) of the amount of fees accrued during his official term and which have been collected and paid to the **Governor's Office for Local Development**~~[Department for Local Government]~~.

Section 36. KRS 64.480 is amended to read as follows:

- (1) Effective, with respect to the offices of Governor on December 11, 1979, and Lieutenant Governor on the fifth Tuesday following the regular November election in 1975, and with respect to the other offices named in this section on the first Monday in January, 1976, the compensation of the following named officers, payable monthly out of the State Treasury, shall be the sum per annum designated for the respective offices, as follows: Governor, forty-five thousand dollars (\$45,000) until December 11, 1981, then fifty thousand dollars (\$50,000) until December 13, 1983, and then sixty thousand dollars (\$60,000) until January 1, 1985; Lieutenant Governor, twenty-seven thousand nine hundred dollars (\$27,900) per annum, plus any compensation received while acting in the place of the Governor; Attorney General, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and clerk of the Supreme Court of Kentucky elected in November, 1975, as clerk of the Court of Appeals, twenty-seven thousand nine hundred dollars (\$27,900).
- (2) In order to equate or adjust the compensation of the Lieutenant Governor, Attorney General, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and clerk of the Supreme Court of Kentucky with the purchasing power of the 1949 dollar, the **Governor's Office for Local Development**~~[Department for Local Government]~~ of Kentucky shall compute by the second Friday in February of every year, beginning in 1977, the maximum permissible compensation of the officials mentioned in this subsection based precisely upon the consumer price index formula approved in *Matthews v. Allen*, Kentucky, 360 S.W.2d 139 (1962). Thus the maximum permissible compensation effective for the entire year of 1977 and subsequent years will be the actual compensation to be paid said officials. The year of adjustment will be the particular full calendar year involved.
- (3) It is the intention of the Legislature that the constitutionally permissible adjustment of salaries of these officials be framed around equating current salaries with the purchasing power of the dollar in 1949 when Section 246 of the Constitution of Kentucky was amended. Section 246 of the Constitution of Kentucky, as amended, established a monetary level of twelve thousand dollars (\$12,000) per annum for said officials. The formula merely effects an adjustment of the constitutional monetary level in terms of the current consumer price index.
- (4) In order to adjust the compensation of the Governor to reflect changes in the purchasing power of the dollar, the **Governor's Office for Local Development**~~[Department for Local Government]~~ shall compute by the second Friday in February of every year, beginning in 1985, an adjusted salary of the Governor by multiplying sixty thousand dollars (\$60,000) by the increase in the consumer price index during the period from January 1, 1984, to the beginning of the then-current calendar year. The actual compensation paid to the Governor for the entire calendar year of 1985 and subsequent years shall be the adjusted salary.

Section 37. KRS 64.527 is amended to read as follows:

In order to equate the compensation of jailers who do not operate full service jails, constables in counties having an urban-county form of government, justices of the peace, county commissioners, and coroners with the purchasing

power of the dollar, the **Governor's Office for Local Development**~~{Department for Local Government}~~ shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than seven thousand two hundred dollars (\$7,200) per annum. The **Governor's Office for Local Development**~~{Department for Local Government}~~ shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled in accordance with the increase or decrease in the consumer price index. Upon notification from the **Governor's Office for Local Development**~~{Department for Local Government}~~, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the **Governor's Office for Local Development**~~{Department for Local Government}~~.

Section 38. KRS 64.5275 is amended to read as follows:

- (1) The General Assembly of the Commonwealth of Kentucky hereby finds and determines that county judges/executive, county clerks, jailers who operate a full service jail, and sheriffs in all counties are officers whose duties or jurisdictions are coextensive with that of the Commonwealth within the meaning of Section 246 of the Constitution of Kentucky.
- (2) Effective on the first Monday in January of 1999, the maximum salary of county judges/executive, county clerks, jailers who operate a full service jail, and sheriffs shall be fixed by the **Governor's Office for Local Development**~~{Department for Local Government}~~ according to a salary schedule in accordance with Section 246 of the Kentucky Constitution. The salary schedule provides that these officials, as officers whose jurisdiction or duties are coextensive with the Commonwealth, shall be paid at a rate no greater than twelve thousand dollars (\$12,000) per annum as adjusted for any increase or decrease in the consumer price index and as described in subsection (4) of this section.
- (3) The salary schedule for county judges/executive, county clerks, jailers who operate a full service jail, and sheriffs in all counties provides for nine (9) levels of salary based upon the population of the county in the year prior to the election of county officials as determined by the United States Department of Commerce, Bureau of the Census's annual estimates. To implement the salary schedule, the **Governor's Office for Local Development**~~{Department for Local Government}~~ shall, by November 1 of each year preceding the election of county officials, certify for each county the population group applicable to each county based on the most recent estimates of the United States Department of Commerce, Bureau of the Census. For the purposes of this section, the salary schedule for county judges/executive, county clerks, jailers who operate a full service jail, and sheriffs shall remain as determined by the **Governor's Office for Local Development**~~{Department for Local Government}~~ pursuant to this section, regardless of changes in the population estimates or the actual census count that may occur during the term for which the official has been elected or appointed. The salary schedule provides four (4) steps for yearly increments within each population group. County officers named in this section shall be paid according to the first step within their population group for the first year or portion thereof they serve in office. Thereafter, each officer, on January 1 of each subsequent year, shall be advanced automatically to the next step in the salary schedule until the maximum salary figure for the population group is reached. Prior to assuming office on the first Monday in January, 1999, or thereafter, any person assuming any of the offices for which the salary is determined by this section must certify to the commissioner of the **Governor's Office for Local Development**~~{Department for Local Government}~~ the total number of years, not to exceed four (4) years, that the person has previously served in the office. The **Governor's Office for Local Development**~~{Department for Local Government}~~ shall place the officer in the proper step based upon a formula of one (1) incremental step per full calendar year of service:

SALARY SCHEDULE

County Population by Group	Steps and Salary for Affected Officers			
Group I	Step 1	Step 2	Step 3	Step 4
0-4,999	\$ 6,600	\$ 6,800	\$ 7,000	\$ 7,200
Group II				
5,000-9,999	7,200	7,400	7,600	7,800
Group III				
10,000-19,999	7,800	8,000	8,200	8,400

Group IV				
20,000-29,999	8,100	8,400	8,700	9,000
Group V				
30,000-44,999	8,700	9,000	9,300	9,600
Group VI				
45,000-59,999	9,000	9,400	9,800	10,200
Group VII				
60,000-89,999	9,600	10,000	10,400	10,800
Group VIII				
90,000-499,999	9,900	10,400	10,900	11,400
Group IX				
500,000 and up	10,500	11,000	11,500	12,000

- (4) Upon publication of the annual consumer price index by the United States Department of Commerce, the ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall fix the salary of the county judge/executive, county clerk, jailer who operates a full service jail, and sheriff at an annual rate of salary to which the county official is entitled pursuant to the increase in the Consumer Price Index and the salary schedule contained in this section. This salary determination shall be retroactive to the preceding January 1.
- (5) Notwithstanding any provision contained in this section, no county official holding office on July 15, 1998, shall receive any reduction in salary or reduction in adjustment to salary otherwise allowable by the statutes in force on July 15, 1998.
- (6) In addition to the step increases based on service in office, each officer shall be paid an annual incentive of one hundred dollars (\$100) per calendar year for each forty (40) hour training unit successfully completed, based on continuing service in that office and, except as provided in this subsection, completion of at least forty (40) hours of approved training in each subsequent calendar year. If an officer fails, without good cause as determined by the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~, to obtain the minimum amount of approved training in any year, the officer shall lose all training incentives previously accumulated. Each training unit shall be approved and certified by the ***Governor's Office for Local Development***~~[Department for Local Government]~~. No officer shall receive more than one (1) training unit per calendar year nor more than four (4) incentive payments per calendar year. Each officer shall be allowed to carry forward up to forty (40) hours of training credit into the following calendar year for the purpose of satisfying the minimum amount of training for that year. Each annual incentive payment shall be adjusted by the ***Governor's Office for Local Development***~~[Department for Local Government]~~ on an annual basis for any increase or decrease in the consumer price index in the same manner as salaries are adjusted as described in subsection (4) of this section. The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish guidelines for the approval and certification of training units.
- (7) Except in counties that contain an urban-county form of government, justices of the peace who serve on fiscal courts, county commissioners, and jailers who operate life safety jails, jailers who are part of a transportation plan, or jailers who act as court bailiffs shall also be eligible for the training incentive payments in accordance with subsection (6) of this section.
- (8) The provisions of this section shall not apply to a county judge/executive in a county which has established a consolidated local government pursuant to KRS Chapter 67C.

Section 39. KRS 64.990 is amended to read as follows:

- (1) If any officer to whom KRS 64.050 applies, or his personal representative, trustee, or committee, as the case may be, collects any fees, accounts, or demands due him in his official capacity after the expiration of his term, or after he has resigned or died or vacated the office, or fails to deliver to his successor all the fees, claims, and

accounts due to him in his official capacity, he, or his personal representative, committee, or trustee, as the case may be, shall be guilty of a Class B misdemeanor.

- (2) If any successor or collector mentioned in subsection (1) of KRS 64.050 fails to make any report or pay the money collected to the *Governor's Office for Local Development*~~[Department for Local Government]~~, as required by subsection (1) of KRS 64.050, he shall be guilty of a Class B misdemeanor. If he knowingly omits or fails to report a correct statement of all money received or collected, or knowingly makes or subscribes any false statement concerning the same, he shall be guilty of a Class D felony.
- (3) If any deputy or personal representative issuing a fee bill in accordance with KRS 64.420 knowingly makes a wrong charge, or in any respect issues an illegal fee bill, he shall be subject to the same penalties as an officer issuing such a fee bill.
- (4) Every fee bill containing one (1) illegal charge, or which, in any respect, is not according to what is required by law, shall be void for the whole amount.
- (5) Any officer who splits up and divides his services so as to make two (2) charges, when the law intends but one (1) charge or fee for the whole service, or who knowingly makes an illegal charge, or issues an illegal fee bill, or collects or attempts to collect his fees twice for the same services, or by any indirection collects or attempts to collect more for his services than is allowed by law, shall be guilty of a Class B misdemeanor and his conviction shall be prima facie evidence of his guilt in a proceeding to remove him from office.
- (6) Any official who violates the provisions of KRS 64.820 to 64.850 shall be guilty of a Class B misdemeanor.

Section 40. KRS 65.003 is amended to read as follows:

- (1) The governing body of each city, county, urban-county, consolidated local government, and charter county, shall adopt, by ordinance, a code of ethics which shall apply to all elected officials of the city, county, urban-county, consolidated local government, or charter county, and to appointed officials and employees of the city, county, urban-county, consolidated local government, or charter county government, or agencies created jointly, as specified in the code of ethics. The elected officials of a city, county, or consolidated local government to which a code of ethics shall apply include the mayor, county judge/executive, members of the governing body, county clerk, county attorney, sheriff, jailer, coroner, surveyor, and constable but do not include members of any school board. Agencies created jointly may include planning or administrative commissions or boards. Candidates for the local government elective offices specified in this subsection shall comply with the annual financial disclosure statement filing requirements contained in the code of ethics.
- (2) Any city, county, or consolidated local government may enter into a memorandum of agreement or an interlocal agreement with one (1) or more other cities, counties, or consolidated local governments for joint adoption of a code of ethics which shall apply to all elected officials of the cities, counties, or consolidated local governments, and to appointed officials and employees as specified by each of the cities, counties, or consolidated local governments which enters into the agreement. Interlocal agreements shall be executed pursuant to the Interlocal Cooperation Act in KRS 65.210 to 65.300. The interlocal agreement or memorandum of agreement may provide for but shall not be limited to:
 - (a) The provision of administrative services relating to the implementation of a code of ethics;
 - (b) The creation of a regional ethics board which serves independently to provide advice to member governments and their officials and provides for the enforcement of locally adopted codes of ethics; and
 - (c) Contracting by a memorandum of agreement with an area development district for the provision of administrative services relating to the implementation of a code of ethics.

Candidates for the city, county, or consolidated local government elective offices specified in this subsection shall comply with the annual financial disclosure statement filing requirements contained in the code of ethics.

- (3) Each code of ethics adopted as provided by subsection (1) or (2) of this section, or amended as provided by subsection (4) of this section, shall include but not be limited to provisions which set forth:
 - (a) Standards of conduct for elected and appointed officials and employees;
 - (b) Requirements for creation of financial disclosure statements, which shall be filed annually by all candidates for the city, county, or consolidated local government elective offices specified in subsection (1) of this section, elected officials of each city, county or consolidated local government, and other officials or employees of the city, county, or consolidated local government, as specified in the code of

ethics, and which shall be filed with the person or group responsible for enforcement of the code of ethics, provided that nonpaid members of jointly created agencies may be exempted from filing financial disclosure statements;

- (c) A policy on the employment of members of the families of officials or employees of the city, county, or consolidated local government, as specified in the code of ethics;
 - (d) The designation of a person or group who shall be responsible for enforcement of the code of ethics, including maintenance of financial disclosure statements, all of which shall be available for public inspection, receipt of complaints alleging possible violations of the code of ethics, issuance of opinions in response to inquiries relating to the code of ethics, investigation of possible violations of the code of ethics, and imposition of penalties provided in the code of ethics.
- (4) The code of ethics ordinance adopted by a city, county, or consolidated local government may be amended but shall not be repealed.
- (5) (a) Within twenty-one (21) days of the adoption of the code of ethics required by this section, each city, county, or consolidated local government shall deliver a copy of the ordinance by which the code was adopted and proof of publication in accordance with KRS Chapter 424 to the ***Governor's Office for Local Development***~~{Department for Local Government}~~. The ***Governor's Office for Local Development***~~{department}~~ shall maintain the ordinances as public records and shall maintain a list of city, county, or consolidated local governments which have adopted a code of ethics and a list of those which have not adopted a code of ethics.
- (b) Within twenty-one (21) days of the amendment of a code of ethics required by this section, each city, county, or consolidated local government shall deliver a copy of the ordinance by which the code was amended and proof of publication in accordance with KRS Chapter 424 to the ***Governor's Office for Local Development***~~{Department for Local Government}~~, which shall maintain the amendment with the ordinance by which the code was adopted.
- (c) For ordinances adopting or amending a code of ethics under this section, cities of the first class and consolidated local governments shall comply with the publication requirements of KRS 83A.060(9), notwithstanding the exception contained in that statute.
- (6) If a city, county, or consolidated local government fails to comply with the requirements of this section, the ***Governor's Office for Local Development***~~{Department for Local Government}~~ shall notify all state agencies, including area development districts, which deliver services or payments of money from the Commonwealth to the city, county, or consolidated local government. Those agencies shall suspend delivery of all services or payments to the city, county, or consolidated local government which fails to comply with the requirements of this section. The ***Governor's Office for Local Development***~~{Department for Local Government}~~ shall immediately notify those same agencies when the city, county, or consolidated local government is in compliance with the requirements of this section, and those agencies shall reinstate the delivery of services or payments to the city, county, or consolidated local government.

Section 41. KRS 65.005 is amended to read as follows:

- (1) (a) "Special district" means any agency, authority, or political subdivision of the state which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, or a school district.
 - (b) "Governing body" means the body possessing legislative authority in a city, county, or special district.
- (2) No special district shall be legally created without sending notification of its existence in writing to the clerk of the county within the jurisdiction of which its principal office shall be located. This requirement for notification is in addition to all other provisions of existing law providing for the creation of special districts. The notification shall contain the names and addresses of the members of the governing body of the district, the name and address of its chief executive officer, a specific reference to the statute or statutes under which it was created, and a brief description of its service area and activities. The clerk shall record the original and forward a copy of the notification to the state local finance officer and the state local debt officer, ***Governor's Office for Local Development***~~{Department for Local Government}~~. The clerk shall be paid a fee of two dollars (\$2) by the district for recording and mailing the notification.

- (3) The governing body of any existing special district shall submit notification as required in subsection (2) of this section within thirty (30) days after June 16, 1966, and the governing body of a newly-created special district shall submit the required notification at or before its first meeting.

Section 42. KRS 65.065 is amended to read as follows:

- (1) The governing body of each district shall annually prepare a budget and, as appropriate, shall classify budget units in the same fashion as county budgets are classified in accordance with KRS 68.240(2) to (5). The state local finance officer shall prepare standard budget forms for district use and shall furnish them to county clerks for distribution to district officers. No moneys shall be expended from any funds or any sources, except in accordance with the budget which has been filed with the fiscal court to be available for public inspection. No budget of a district shall become effective until filed with the fiscal court of the county in which the district is located for submission to the ***Governor's Office for Local Development***~~{Department for Local Government}~~. For those districts with multicounty jurisdictions, the district shall file a copy with each of the fiscal courts within the jurisdiction of the district for their review. If the budget is not filed with the fiscal court at least thirty (30) days prior to the start of the district fiscal year, the fiscal court shall immediately notify the county attorney. The county attorney shall then notify the governing board of the special district of the noncompliance and then proceed with any steps necessary to prevent the expenditure of funds by the special district until the district is in compliance.
- (2) The governing body of each district which for the year in question receives from all sources or expends for all purposes less than four hundred thousand dollars (\$400,000) shall annually prepare a financial statement, except that once every four (4) years the district's governing body shall provide for the performance of an audit as provided in subsection (4) of this section.
- (3) The governing body of each district which for the year in question receives from all sources or expends for all purposes four hundred thousand dollars (\$400,000) or more shall provide for the performance of an annual audit as provided in subsection (4) of this section.
- (4) To provide for the performance of an audit, the governing body of a district shall employ an independent certified public accountant or contract with the Auditor of Public Accounts to perform an audit of the funds in the district budget. The audit shall conform to:
- (a) Generally-accepted governmental auditing standards, which means those standards for audits of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States; and
 - (b) Additional procedures and reporting requirements as may be required by the Auditor of Public Accounts. A unit of government furnishing funds directly to a district may require additional audits at its own expense. Upon request, the State Auditor of Public Accounts may review the final report and all related work papers and documents of the independent certified public accountant relating to the audit. If a district is required by law to audit its funds more often than is required by this section, it shall perform those audits and may submit them in lieu of the requirements of this section, if the audits meet the requirements of this subsection.
- (5) The provisions of subsection (2) of this section shall not apply to any district that is required by law to annually submit a financial report to an agency of state government. The districts shall annually submit a copy of their financial report to the county judge/executive and to the state local finance officer and once every four (4) years provide for the performance of an audit as provided in subsection (4) of this section.
- (6) Any resident of the district may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the governing body of the district has violated the provisions of this section, shall order the district to comply with the provisions. The Circuit Court, in its discretion, may allow the prevailing party, other than the district, a reasonable attorney's fee and court costs, to be paid from the district's treasury.

Section 43. KRS 65.070 is amended to read as follows:

- (1) Within sixty (60) days following the close of the fiscal year, the district shall:
- (a) File with the county clerk of each county with territory in the district a certification showing any of the following information that has changed since the last filing by the district:
 - 1. The name of the district;

2. A map or general description of its service area;
 3. The statutory authority under which it was created; and
 4. The names, addresses, and the date of expiration of the terms of office of the members of its governing body and chief executive officer;
- (b) Submit for review a copy of the summary financial statement with the fiscal court of each county with territory in the district; and
- (c) Publish, in lieu of the provisions of KRS 424.220, but in compliance with other applicable provisions of KRS Chapter 424, the names and addresses of the members of its governing body and chief executive officer, and either a summary financial statement, which includes the location of supporting documents, or the location of district financial records which may be examined by the public.
- (2) The district shall submit for review a copy of the audit with the fiscal court of each county with territory in the district. The submission shall be made within thirty (30) days of the district's receipt of the completed audit.
- (3) The **Governor's Office for Local Development**~~{Department for Local Government}~~ shall prepare and furnish to county clerks standard reporting forms which districts may use to comply with the provisions of this section.
- (4) Any resident of the district may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the governing body of the district has violated the provisions of this section, shall order the district to comply with its provisions. The Circuit Court, in its discretion, may allow the prevailing party, other than the district, a reasonable attorney's fee and court costs, to be paid from the district's treasury.

Section 44. KRS 65.260 is amended to read as follows:

- (1) No agreement made pursuant to KRS 65.210 to 65.300 shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made pursuant to KRS 65.210 to 65.300, that performance may be offered in satisfaction of the obligation or responsibility.
- (2) Except as provided in subsections (3) and (4) of this section, every agreement made pursuant to KRS 65.210 to 65.300 shall, prior to and as a condition precedent to its entry into force, be submitted to the Attorney General who shall determine whether the agreement is in proper form and compatible with the laws of this state, except for interlocal agreements between cities, counties, charter counties, urban-county governments, and sheriffs upon approval of the fiscal court, which shall be submitted to the **Governor's Office for Local Development**~~{Department for Local Government}~~. The Attorney General or the **Governor's Office for Local Development**~~{Department for Local Government}~~ shall approve any agreement submitted to them under this subsection unless they find that it does not meet the conditions set forth in KRS 65.210 to 65.300. If the agreement does not meet these conditions, the Attorney General or the **Governor's Office for Local Development**~~{Department for Local Government}~~ shall detail in writing, addressed to the governing bodies of the public agencies concerned, the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within sixty (60) days of its submission shall constitute approval thereof.
- (3) The submission of an interlocal cooperative agreement to the Attorney General or the **Governor's Office for Local Development**~~{Department for Local Government}~~ as provided in subsection (2) of this section shall not be required for any cooperative agreement which involves only the construction, reconstruction, or maintenance of a municipal road or bridge, provided a written agreement is approved by each of the affected governing bodies.
- (4) Interlocal cooperative agreements between school boards and counties shall be exempt from the provisions of subsection (2) of this section.

Section 45. KRS 65.320 is amended to read as follows:

There shall be created a Local Government Training Advisory Council in Kentucky, to be composed of the presidents or their designees of the Kentucky Association of Counties, the County Judge/Executives Association, **and** the Kentucky League of Cities~~[-, the chairperson of the Kentucky Urban Affairs Council,]~~ and the commissioner of the **Governor's Office for Local Development**~~{Department for Local Government}~~.

Section 46. KRS 65.323 is amended to read as follows:

- (1) The Local Government Training Advisory Council shall:
 - (a) Develop and update on a biennial basis a local government training plan that:
 1. Quantifies the training needs of local governments;
 2. Evaluates the abilities of existing training programs to meet the needs;
 3. Identifies areas of unmet need that justify expanding existing programs or the creation of new programs; and
 4. Formulates a strategy, giving consideration to the use of state-of-the-art communication techniques to enhance training efforts, that meets the needs of local governments;
 - (b) Submit a copy of the local government training plan to the Legislative Research Commission by November 1 of odd-numbered years;
 - (c) Ensure the proper coordination of training programs for city and county governments; and
 - (d) Elect a chairperson annually from its membership.
- (2) The council shall adopt the plan provided for in subsection (1)(a) of this section by majority vote, at which time it shall become the policy document used by the ***Governor's Office for Local Development***~~{Department for Local Government}~~ to determine priorities for the expenditure of training funds.

Section 47. KRS 65.327 is amended to read as follows:

- (1) The Local Government Training Advisory Council shall use the expertise of existing training providers in developing new or expanded programs. This includes, but is not limited to:
 - (a) All institutions of higher education and affiliate organizations that provide training and technical assistance to local governments;
 - (b) State agencies that provide training related to statutory or regulatory oversight responsibilities;
 - (c) Area development districts;
 - (d) Public official professional associations;
 - (e) Private providers associated with established certification programs; and
 - (f) Any other provider suitable for developing effective training programs.
- (2) The council shall be attached to the ***Governor's Office for Local Development***~~{Department for Local Government}~~ for administrative purposes.

Section 48. KRS 65.905 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, each local government as defined in KRS 65.900 shall annually, after the close of the fiscal year, complete a uniform financial information report. The report shall be submitted to the ***Governor's Office for Local Development***~~{Department for Local Government}~~ by May 1 immediately following the close of the fiscal year. The ***Governor's Office for Local Development***~~{Department for Local Government}~~ shall immediately send one (1) copy of the uniform financial information report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.
- (2) The final quarterly report filed by a county within fifteen (15) days after the end of the last quarter of the fiscal year, in accordance with KRS 68.360(2), shall be deemed the uniform financial information report for that county for purposes of compliance with KRS 65.900 to 65.925, if that quarterly report contains, at a minimum, all information required by KRS 65.910.
- (3) Each city may have the uniform financial information report completed by its selected auditor as part of the terms and conditions of the written agreement between the city and the auditor in accordance with KRS 91A.040. Each county may have the uniform financial information report completed by its auditor selected in accordance with KRS 43.070 or 64.810. Each special district may have the uniform financial information report completed by its auditor selected in accordance with KRS 65.065. If a city does not use the auditor to complete the uniform financial information report, it shall by order designate an elected or nonelected official to be responsible for annually completing the report and submitting it to the ***Governor's Office for Local***

Development~~[Department for Local Government]~~. If a local government has any agency, board, or commission that receives any funding from the local government, but conducts its operations on an autonomous or semi-autonomous basis, the local government shall note on the uniform financial information report the name of the agency, board, or commission; the mailing address of the agency, board, or commission; and the dollar amount annually appropriated by the local government to the agency, board, or commission.

- (4) The **Governor's Office for Local Development**~~[Department for Local Government]~~ shall by administrative regulation prescribe the format of the uniform financial information report, **and**~~[-The department]~~ shall attempt to coordinate and combine efforts with the United States Bureau of the Census in the development of the format of the uniform financial information report so that a single report will meet the needs of both agencies and fulfill the requirements of KRS 65.900 to 65.925. Regardless of any agreement between the **Governor's Office for Local Development**~~[Department for Local Government]~~ and the United States Bureau of the Census, the **Governor's Office for Local Development**~~[department]~~ shall maintain responsibility for assuring that a uniform financial information report is distributed to each local government as soon as practicable after the close of each fiscal year, but in no event later than one hundred twenty (120) days prior to the required submission date of May 1.
- (5) The **Governor's Office for Local Development**~~[Department for Local Government]~~ shall use the uniform financial information report to replace as many financial information forms as possible that local governments are currently required to complete and submit to **that office**~~[the department]~~ for use by either the state or federal governments, by consolidating the required information into the uniform report.

Section 49. KRS 65.910 is amended to read as follows:

- (1) The uniform financial information report shall include, but not be limited to, information relating to demographics, bonded indebtedness, debt service requirements, lease-purchase agreements, tax rates and revenues, licenses, permits, fees, utilities, intergovernmental revenues, miscellaneous revenues, charges for services, and all expenditures as set forth in this section.
- (2) Demographic information shall include:
 - (a) The name of the unit of local government;
 - (b) The county in which the city or special district is located;
 - (c) The classification of the city;
 - (d) The population of the unit of local government;
 - (e) The form of government of the city; and
 - (f) The area development district in which the unit of local government is located.
- (3) Bonded indebtedness and debt service information shall include:
 - (a) The name of each project listed individually;
 - (b) The type of bond issue used for each project;
 - (c) The bonded indebtedness of each project;
 - (d) The debt service requirements of each project; and
 - (e) The specific source of debt service funds, whether local government appropriations or use of nongovernment funds.
- (4) Lease-purchase agreement information shall include:
 - (a) Purpose of the agreement;
 - (b) Identity of the lessor;
 - (c) Principal amount of the agreement;
 - (d) Interest rate or rates for the agreement;
 - (e) Date the local government entered into agreement;

- (f) Length of term of agreement;
 - (g) Current annual debt service requirements for agreement; and
 - (h) A list of and the purpose of any short-term renewal bank notes.
- (5) Tax rate and revenue information shall include:
- (a) The compensating tax rate and the maximum tax rate for the current fiscal year and the preceding fiscal year;
 - (b) The current fiscal year ad valorem tax rate levied by the local government, the preceding fiscal year revenues collected by the local government, and the assessed property valuation for real property, personal property, and motor vehicles and watercraft; and
 - (c) The current fiscal year tax rate levied by the local government and the preceding fiscal year revenues collected by the local government for the following types of taxes:
 - 1. Occupational license tax on persons;
 - 2. Occupational license tax on business net profits, gross receipts, or a flat rate;
 - 3. Insurance premium tax on fire and allied perils, casualty liability only, vehicle, inland marine, health, life, all other risks taxed, minimum tax and company taxable reserves;
 - 4. Transient room tax;
 - 5. Restaurant tax;
 - 6. Bank franchise tax;
 - 7. Delinquent collections; and
 - 8. Special purpose and other taxes.
- (6) Information on licenses, permits, and fees shall include the amount charged and the preceding fiscal year revenues collected by the local government for the following types of licenses, permits, and fees:
- (a) Alcoholic beverage licenses for the manufacture and sale, distilled spirits and wine, malt beverages, Sunday sales, and regulatory license fee on gross receipts;
 - (b) Required sticker fees on automobiles and trucks;
 - (c) Motor vehicles fees on taxicabs, truck-tractors, semitrailers and trailers;
 - (d) Coin-operated machines;
 - (e) Cable television;
 - (f) Building, electrical, and plumbing permits;
 - (g) Zoning permits and development impact fees;
 - (h) Building, elevator, electrical, plumbing, food, rehabilitation, and any other inspection fees;
 - (i) Licensing of electricians and electrical contractors;
 - (j) Unloading fees;
 - (k) Public service fees for fire protection, police protection;
 - (l) Ambulance service franchise fees and ambulance run fees;
 - (m) Animal license fees; and
 - (n) Any other source of license, permit, or fee.
- If varying rates or fees are charged based upon classification, volume, value, or other criteria, the local government shall submit a fee chart with the report form.
- (7) Information on utilities shall include the franchise tax or fee, charge for service, user fee or "tap on" fee, and preceding fiscal year revenues collected by the local government on the following utilities:
- (a) Waterworks;

- (b) Sewage treatment;
- (c) Electric light, heat, and power;
- (d) Gas;
- (e) Garbage collection for residential, commercial, and industrial customers, and landfill fees;
- (f) Transit authority; and
- (g) Any other type of utility.

If varying rates or fees are charged based upon classification, volume, value, or other criteria, the local government shall submit a fee chart with the report form.

- (8) Information on intergovernmental revenues shall include the types of intergovernmental revenues received by the local government, preceding fiscal year revenues collected by the local government, and rate and interest requirements for loan repayments that shall include:
 - (a) Kentucky Law Enforcement Foundation Program fund;
 - (b) Professional Firefighters Foundation Program fund;
 - (c) Community development block grant funds;
 - (d) County or municipal road aid;
 - (e) Local government economic assistance funds;
 - (f) Net court revenues;
 - (g) Kentucky Infrastructure Authority funds;
 - (h) Economic development bonds;
 - (i) Kentucky Economic Development Finance Authority funds;
 - (j) Environmental Protection Agency funds;
 - (k) County or city transfers; and
 - (l) Any other source of state or federal funds.
- (9) Information on miscellaneous revenues and charges for services shall include the source of revenue, charge, or fee levied by the local government and preceding fiscal year revenues collected for the following:
 - (a) Parking meter receipts;
 - (b) Parking facility receipts;
 - (c) Parking violation fines;
 - (d) Charges for impounded vehicles;
 - (e) Sale of abandoned vehicles;
 - (f) Delinquent tax bills;
 - (g) Fines and forfeitures;
 - (h) Penalties and interest;
 - (i) Franchise payments for governmental services bid out to the private sector;
 - (j) Golf course receipts;
 - (k) Parks and recreation;
 - (l) Proceeds from sale of seized and forfeited property;
 - (m) Rent;
 - (n) Interest from investments and dividends; and

(o) Any other source of revenue or charge for service.

- (10) Information on expenditures shall be listed by total only and indicate the fund from which an appropriation was made. The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall consult with the Kentucky League of Cities, the Kentucky Association of Counties, the Kentucky Municipal Finance Officers' Association, the Kentucky Society of Certified Public Accountants, and other affected interest groups, as well as local officials in the development of information to be included in the expenditure section of the uniform financial information report.

Section 50. KRS 65.900 is amended to read as follows:

As used in KRS 65.905 to **65.925**~~65.920~~, unless the context requires otherwise:

- (1) "City" means every city organized and governed under the mayor-alderman form of government pursuant to KRS Chapter 83, every city organized and governed under the mayor-council form of government pursuant to KRS Chapter 83A, every city organized and governed under the commission form of government pursuant to KRS Chapter 83A, every city organized and governed under the city manager form of government pursuant to KRS Chapter 83A, and every urban-county government organized and governed under the urban-county form of government pursuant to KRS Chapter 67A.
- (2) "County" means any of Kentucky's one hundred and twenty (120) counties.
- (3) "Special district" means any district with ad valorem taxing powers including, but not limited to, those specified in the following KRS statutes: KRS 75.010 to 75.260, KRS 76.274 to 76.279, KRS 104.450 to 104.680, KRS 107.310 to 107.500, KRS 108.080 to 108.180, KRS 109.115 to 109.190, KRS 147.610 to 147.710, KRS 164.605 to 164.675, KRS 173.450 to 173.650, KRS 173.710 to 173.800, KRS 179.700 to 179.990, KRS 210.370 to 210.480, KRS 212.720 to 212.760, KRS 216.310 to 216.360, KRS 220.010 to 220.613, KRS 262.010 to 262.660, KRS 262.700 to 262.990, KRS 266.010 to 266.990, KRS 268.010 to 268.990, and KRS 269.100 to 269.270.
- (4) "Local government" includes the terms city, county, and special district as defined in this section.
- (5) "Lease-purchase agreement" means an agreement to lease or to lease and purchase major items of property, equipment, or services estimated to cost fifty thousand dollars (\$50,000) or more, and two hundred thousand dollars (\$200,000) or more for the construction or installation of a building or a utility.

Section 51. KRS 65.920 is amended to read as follows:

- (1) Any local government that fails to submit annually a uniform financial information report to the ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall be ineligible to receive county or municipal road aid moneys in accordance with KRS 177.360 or 177.366. Any local government receiving road aid moneys in accordance with KRS 177.365 to 177.369 or KRS 177.320 and 177.360 that fails to comply with the provisions of KRS 65.900 to **65.925**~~65.915~~ shall immediately have all road aid payments suspended until the local government submits the uniform financial information report to the ***Governor's Office for Local Development***~~[Department for Local Government]~~.
- (2) If a local government receives payments of money from the Commonwealth and fails to comply with the provisions of KRS 65.900 to 65.925 or KRS 92.280(1), the state local finance officer may notify those agencies making payments to the local government of noncompliance, and those agencies shall immediately suspend delivery of all payments to the local government except those payments made pursuant to KRS Chapter 154 or KRS 42.4588, until the state local finance officer determines that the local government has complied with the requirements of KRS 65.900 to 65.925 or KRS 92.280(1).

Section 52. KRS 65.925 is amended to read as follows:

The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall consult with the Legislative Research Commission to determine a format for electronic data which is acceptable to both. At the earliest date possible, but no later than September 30, 1992, and each year thereafter, the ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall provide a copy of all reliable data from the uniform financial information reports of all reporting governments to the Legislative Research Commission in the agreed upon electronic format. The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall, upon receipt, file a copy of each completed uniform financial information report with the county clerk of the county in which the reporting unit of local government is located.

Section 53. KRS 66.370 is amended to read as follows:

- (1) A county may, by order of its fiscal court, surrender to the state local debt officer, ***Governor's Office for Local Development***~~[Department for Local Government]~~, all money in hand, notes, bonds, accounts, or other credits representing assets available, and any other sums which may hereafter become available from any and all sources, for paying the principal and interest of any bonded debt of the county; however, if a county surrenders the sinking fund for any bond issue payable either from the tax levy authorized by Section 157 or by Section 157a of the Constitution of Kentucky or from any special tax levy authorized by law, it shall also surrender the sinking funds for all other bonds payable from the same tax levy as herein defined. The surrender shall be irrevocable on the part of the county. Any county which has a bond issue approved under KRS 66.310 may comply with the provisions of this subsection with respect to the sinking funds for the bonds thus approved and for any other bonds payable from the same tax levy as herein defined.
- (2) All cash received under this section by the state local debt officer, ***Governor's Office for Local Development***~~[Department for Local Government]~~, shall be deposited with the commissioner, ***Governor's Office for Local Development***~~[Department for Local Government]~~ to the credit of a fund designated the "county sinking fund." All assets other than cash shall be deposited with the commissioner, ***Governor's Office for Local Development***~~[Department for Local Government]~~ and shall be liquidated, upon authorization of the ~~commissioner~~~~[commission]~~, within a reasonable time.
- (3) The county treasurer of any county complying with the provisions of this section shall remit monthly to the state local debt officer, ***Governor's Office for Local Development***~~[Department for Local Government]~~, all moneys received from any tax levy made for the exclusive purpose of paying principal and interest on any bonds. Any moneys appropriated in the county budget from any other source or any moneys required by law to be used for the same purpose shall be remitted as required for paying any principal or interest maturities, or both, or meeting sinking fund requirements. The state local debt officer, ***Governor's Office for Local Development***~~[Department for Local Government]~~ may institute actions in the Franklin Circuit Court to enforce the provisions of this subsection or to recover any funds that may have been misapplied.
- (4) Accounts showing the county sinking fund receipts and disbursements shall be kept by the state local debt officer, ***Governor's Office for Local Development***~~[Department for Local Government]~~ for each bond issue of each county for which deposits are made in the fund. As of the close of the county fiscal year the state local debt officer, ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall, within thirty (30) days thereafter, render to the county judge/executive of each county having deposits in the fund a statement thereof for each bond issue of that county. On or about the first day of May of each year, the state local debt officer, ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall deliver to the county judge/executive an estimate of the principal and interest requirements of outstanding bonds issued by that county or of the proportionate annual amount which should be deposited in a sinking fund.
- (5) Disbursements from the county sinking fund shall, when authorized by the state local debt officer, ***Governor's Office for Local Development***~~[Department for Local Government]~~ be made in the same manner as other claims on the Commonwealth are paid. Disbursements may be made only for:
 - (a) The payment of principal or interest, or both, of the bonds for which the deposit was made; and
 - (b) The investment of the funds as authorized by law.
- (6) All coupons and bonds for the payment of which deposits are made in the county sinking fund shall be paid either directly by the state local debt officer, ***Governor's Office for Local Development***~~[Department for Local Government]~~ or by the bank designated as paying agent. That bank may be paid a reasonable fee for its services by the ***Governor's Office for Local Development***~~[Department for Local Government]~~ out of its appropriation. All paid bonds and coupons shall be surrendered to the state local debt officer and canceled, and shall be delivered to the judge/executive of each county along with the annual statement provided for in this section.

Section 54. KRS 67.680 is amended to read as follows:

- (1) A county acting under authority of this section may by ordinance create a county cemetery board that may apply to the ***Governor's Office for Local Development***~~[Department for Local Government]~~ for grants to restore and maintain nonprofit cemeteries that do not receive perpetual care funds pursuant to KRS 367.952.
- (2) The county cemetery boards shall meet three (3) times annually in space provided by the fiscal court and shall have five (5) volunteer members with no more than three (3) representing the same political party. Members

shall be appointed by the county judge/executive with approval of the fiscal court, shall have lived in the county for at least one (1) year prior to appointment, and shall have demonstrated an interest in cemetery preservation, genealogy, local history, or a related area.

Section 55. KRS 67.682 is amended to read as follows:

- (1) The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall establish a county cemetery fund to receive appropriations, gifts, grants, federal funds, revolving funds, and any other funds from public and private sources.
 - (a) Moneys deposited in the fund shall be disbursed by the State Treasurer and any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9).
 - (b) Income earned from investment including unallotted or unencumbered balances in the fund shall not lapse, shall be returned to the ***Governor's Office for Local Development***~~[Department for Local Government]~~, and may be redistributed to other counties.
- (2) The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall promulgate administrative regulations related to responsibilities of the boards, grant appropriation amounts and eligible expenditures, application and reporting procedures, accountability criteria for grant recipients, and other issues of importance to the board's operation.

Section 56. KRS 67C.131 is amended to read as follows:

- (1) The salary of the members of the legislative council of a newly consolidated local government created by the provisions of KRS 67C.101 to 67C.137 shall be eighty percent (80%) of that amount that is permitted for county commissioners on July 14, 2000, as provided by Section 246 of the Kentucky Constitution. In order to equate the compensation of legislative council members with the purchasing power of the dollar, the ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year. The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled in accordance with the increase or decrease in the consumer price index. Upon notification from the ***Governor's Office for Local Development***~~[Department for Local Government]~~, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the ***Governor's Office for Local Development***~~[Department for Local Government]~~.
- (2) Each legislative council member may hire one (1) full-time staff person.

Section 57. KRS 68.001 is amended to read as follows:

As used in this chapter and other provisions of law, "state local finance officer" shall mean the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~, or his agent designated in writing with the approval of the Governor.

Section 58. KRS 81A.470 is amended to read as follows:

- (1) If the limits of a city are enlarged or reduced, the city shall, within sixty (60) days of the enlargement or reduction, cause an accurate map and description of the annexed, transferred, or severed area, together with a copy of the ordinance duly certified, to be recorded in the office of the county clerk of the county or counties in which the city is located, in the office of the Secretary of State, and in the ***Governor's Office for Local Development***~~[Department for Local Government]~~. The map and description shall be prepared by a professional land surveyor. The documents shall depict the parcel annexed, transferred, or severed as a closed geometric figure on a plat annotated with bearings and distances, or sufficient curve data to describe each line. The professional land surveyor shall clearly state on the documents the location of the existing municipal boundary, any physical feature with which the proposed municipal boundary coincides, and a statement of the recorded deeds, plats, right-of-way plans, or other resources used to develop the documents depicting the municipal boundary.
- (2) No city which has annexed unincorporated or accepted transfer of incorporated territory may levy any tax upon the residents or property within the annexed or transferred area until the city has complied with the provisions of subsection (1) of this section, and of KRS 81A.475.

Section 59. KRS 83.580 is amended to read as follows:

- (1) The mayor shall:
- (a) Cause the ordinances of the city and the laws of the state to be executed and enforced;
 - (b) Communicate to the board of aldermen at least once a year a statement of the finances and general condition of the affairs of the city, and information in relation thereto as the board of aldermen requires;
 - (c) Recommend, by written message to the board of aldermen, the measures he deems expedient;
 - (d) Fill, with the consent of the board of aldermen, all vacancies in executive and ministerial offices and the filling of which is not otherwise provided for;
 - (e) Exercise a general supervision over all the executive and ministerial officers of the city, and see that their official duties are honestly performed; and
 - (f) No later than January 31 of each year, mail to the ***Governor's Office for Local Development***~~(Department for Local Government)~~ a list containing current city information including, but not limited to the following:
 1. The correct name of the mayor, members of the board of aldermen, and the following appointed officials who are serving as of January 1 of each year:
 - a. Clerk of the board of aldermen;
 - b. City treasurer;
 - c. City attorney;
 - d. Finance director;
 - e. Police chief;
 - f. Fire chief; and
 - g. Public works director;
 2. The correct name of the city, mailing address for city hall, and the telephone number of city hall; and
 3. The name and telephone number of either an elected or appointed official to serve as a contact person that may be reached during normal business hours of 8:00 a.m. to 4:30 p.m.
- (2) The mayor shall appoint to those seats which are not subject to prior qualification on a board or commission an equal number of members from each county commissioner's district, as created in accordance with KRS 67.045, into which the authority of the board or commission extends. If there are more districts than members of a particular board or commission, the mayor shall not appoint more than one (1) member from any district. If there are more members of a particular board or commission than there are districts, the mayor shall equalize appointments from among districts to the extent possible. The mayor shall not be required, but shall use his best efforts, to balance appointments from among districts on a board or commission if the appointments are to be made from nominees submitted by other groups or individuals, or if nominees shall have a professional or technical background, expertise, or membership. The mayor shall attempt to balance appointments from among districts on all boards and commissions to equalize representation of all districts over the entire range of boards and commissions.
- (3) The mayor may:
- (a) Remove from office, by a written order, any officer appointed by him, unless otherwise provided by law;
 - (b) Appoint his own staff, and remove them at pleasure;
 - (c) Require from any executive or ministerial officer of the city or joint agency of the city a statement in writing concerning the discharge of his duties; and
 - (d) Exercise the same power to administer oaths that justices of the peace and other judicial officers of the state have.

- (4) The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall immediately forward one (1) copy of the information received from the mayor to the Legislative Research Commission.

Section 60. KRS 83A.075 is amended to read as follows:

- (1) In order to equate the compensation of mayors and members of city legislative bodies with the purchasing power of the dollar, the ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the mayor in cities of the first class shall be paid at a rate no greater than twelve thousand dollars (\$12,000) per annum and mayors in cities other than the first class and legislative body members shall be paid at a rate no greater than seven thousand two hundred dollars (\$7,200) per annum.
- (2) The legislative body of the city shall set the compensation of the officer in accordance with KRS 83A.070 at a rate no greater than that stipulated by the ***Governor's Office for Local Development***~~[Department for Local Government]~~.

Section 61. KRS 83A.085 is amended to read as follows:

- (1) Each city, except a city of the first class, shall establish the office of city clerk.
- (2) The office of city clerk may be combined with any other nonelected city office by inclusion of the title and duties of the office in the ordinance establishing the office of city clerk.
- (3) The duties and responsibilities of the clerk shall include, but not be limited to, the following:
 - (a) Maintenance and safekeeping of the permanent records of the city;
 - (b) Performance of the duties required of the "official custodian" or "custodian" in accordance with KRS 61.870 to 61.882;
 - (c) Possession of the seal of the city if used;
 - (d) No later than January 31 of each year, mail to the ***Governor's Office for Local Development***~~[Department for Local Government]~~ a list containing current city information including, but not limited to, the following:
 1. The correct name of the mayor, legislative body members, and the following appointed officials who are serving as of January 1 of each year:
 - a. City clerk;
 - b. City treasurer;
 - c. City manager;
 - d. City attorney;
 - e. Finance director;
 - f. Police chief;
 - g. Fire chief; and
 - h. Public works director;
 2. The correct name of the city, mailing address for city hall, and telephone number of city hall; and
 3. The name and telephone number of either an elected or appointed official to serve as a contact person that may be reached during normal business hours of 8 a.m. to 4:30 p.m.;
 - (e) Performance of all other duties and responsibilities required of the city clerk by statute or ordinance; and
 - (f) The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall immediately forward one (1) copy of the information received from each city clerk to the Legislative Research Commission.

Section 62. KRS 91A.040 is amended to read as follows:

- (1) Each city of the first through fifth class shall, after the close of each fiscal year, cause each fund of the city to be audited by the Auditor of Public Accounts or a certified public accountant. The audits shall be completed by February 1 immediately following the fiscal year being audited. Within ten (10) days of the completion of the audit and its presentation to the city legislative body, in accordance with subsection (4)(e) of this section, each city shall forward three (3) copies of the audit report to the ***Governor's Office for Local Development***~~[Kentucky Department for Local Government]~~ for information purposes. The ***Governor's Office for Local Development***~~[department]~~ shall forward one (1) copy of the audit report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.
- (2) Except as provided in subsection (3) of this section, each city of the sixth class shall, after the close of each odd-numbered fiscal year, cause each fund of the city to be audited by the Auditor of Public Accounts or a certified public accountant. The audits shall be completed by February 1 immediately following the fiscal year to be audited. Within ten (10) days of the completion of the audit and its presentation to the city legislative body, in accordance with subsection (4)(e) of this section, each sixth class city shall forward three (3) copies of the audit report to the ***Governor's Office for Local Development***~~[Kentucky Department for Local Government]~~ for information purposes. The ***Governor's Office for Local Development***~~[department]~~ shall forward one (1) copy of the audit report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975. After the close of each even-numbered fiscal year, each sixth class city shall prepare a financial statement in accordance with KRS 424.220 and immediately forward one (1) copy to the ***Governor's Office for Local Development, which***~~[Kentucky Department for Local Government. The department]~~ shall forward one (1) copy of the financial statement to the Legislative Research Commission.
- (3) Any city of the sixth class, which for any fiscal year receives and expends, from all sources and for all purposes, less than seventy-five thousand dollars (\$75,000), and which has no long-term debt, whether general obligation or revenue debt, shall not be required to audit each fund of the city for that particular fiscal year. Each city shall annually prepare a financial statement in accordance with KRS 424.220 and immediately forward one (1) copy to the ***Governor's Office for Local Development***~~[Kentucky Department for Local Government]~~ for information purposes. The ***Governor's Office for Local Development***~~[department]~~ shall be responsible for forwarding one (1) copy of the financial statement to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.
- (4) Each city required by this section to conduct an annual or biannual audit shall enter into a written contract with the selected auditor. The contract shall set forth all terms and conditions of the agreement which shall include, but not be limited to, requirements that:
 - (a) The auditor be employed to examine the basic financial statements, which shall include the government-wide and fund financial statements;
 - (b) The auditor shall include in the annual city audit report an examination of local government economic assistance funds granted to the city under KRS 42.450 to 42.495. The auditor shall include a certification with the annual audit report that the funds were expended for the purpose intended;
 - (c) All audit information be prepared in accordance with generally accepted governmental auditing standards which include tests of the accounting records and auditing procedures considered necessary in the circumstances. Where the audit is to cover the use of state or federal funds, appropriate state or federal guidelines shall be utilized;
 - (d) The auditor prepare a typewritten or printed report embodying:
 1. The basic financial statements and accompanying supplemental and required supplemental information;
 2. The auditor's opinion on the basic financial statements or reasons why an opinion cannot be expressed; and
 3. Findings required to be reported as a result of the audit;
 - (e) The completed audit and all accompanying documentation shall be presented to the city legislative body at a regular or special meeting; and
 - (f) Any contract with a certified public accountant for an audit shall require the accountant to forward a copy of the audit report and management letters to the Auditor of Public Accounts upon request of the

city or the Auditor of Public Accounts, and the Auditor of Public Accounts shall have the right to review the certified public accountant's work papers upon request.

- (5) A copy of an audit report which meets the requirements of this section shall be considered satisfactory and final in meeting any official request to a city for financial data, except for statutory or judicial requirements, or requirements of the Legislative Research Commission necessary to carry out the purposes of KRS 6.955 to 6.975.
- (6) Each city shall, within thirty (30) days after the presentation of an audit to the city legislative body, publish an advertisement in accordance with KRS Chapter 424 containing:
 - (a) The auditor's opinion letter;
 - (b) The "Budgetary Comparison Schedules-Major Funds," which shall include the general fund and all major funds;
 - (c) A statement that a copy of the complete audit report, including financial statements and supplemental information, is on file at city hall and is available for public inspection during normal business hours;
 - (d) A statement that any citizen may obtain from city hall a copy of the complete audit report, including financial statements and supplemental information, for his personal use;
 - (e) A statement which notifies citizens requesting a personal copy of the city audit report that they will be charged for duplication costs at a rate that shall not exceed twenty-five cents (\$0.25) per page; and
 - (f) A statement that copies of the financial statement prepared in accordance with KRS 424.220 are available to the public at no cost at the business address of the officer responsible for preparation of the statement.
- (7) Any city of the fifth or sixth class may utilize the alternative publication methods authorized by KRS 424.190(2) to comply with the provisions of this section.
- (8) Any person who violates any provision of this section shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). In addition, any officer who fails to comply with any of the provisions of this section shall, for each failure, be subject to a forfeiture of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), in the discretion of the court, which may be recovered only once in a civil action brought by any resident of the city. The costs of all proceedings, including a reasonable fee for the attorney of the resident bringing the action, shall be assessed against the unsuccessful party.

Section 63. KRS 91A.050 is amended to read as follows:

The ***Governor's Office for Local Development***~~(Department for Local Government)~~ shall make available to all cities assistance in meeting the requirements of KRS 91A.010 to 91A.060, including the preparation and dissemination of model systems for accounting and budgeting, and other technical materials.

Section 64. KRS 96.530 is amended to read as follows:

- (1) Any city acquiring or constructing an electric light, heat, and power plant under the provisions of KRS 96.520 shall, by ordinance, appoint a city utility commission consisting of three (3) commissioners to operate, manage, and control the plant, except that a city of the second class shall appoint five (5) commissioners. The utility commission shall have absolute control of the plant in every respect, including its operation and fiscal management and the regulation of rates, except that in fixing rates the commission shall be governed by the provisions of KRS 96.430, as it is made applicable to those plants by KRS 96.520, and by any ordinance enacted under that section, except that in fixing rates the commission in a city of the second or third class shall be governed by the provisions of KRS 96.535 and any ordinance enacted according to this section. The utility commission, when so appointed, shall be a public body politic and corporate, with perpetual succession; and the body may contract and be contracted with, sue and be sued, in and by its corporate name, and have and use a corporate seal. The utility commission shall provide rules for the management of the plant, and it shall fix the number, qualifications, pay, and terms of employment of all employees needed to operate the plant. In cities of the second or third class providing civil service coverage for city employees, the utility commission appointed under this section may provide civil service coverage for all of its employees and it shall exercise the powers and functions with respect to their employees which are vested in the city legislative body with respect to the city employees by KRS 90.380. Employees who have been in the employment of the utility commission for one (1) year immediately preceding the adoption of an order by the utility commission placing all of its employees under civil service coverage shall not be required to stand a civil service examination and they shall

be eligible for all the benefits provided by civil service coverage. Out of the revenue of the plant, it shall pay operating expenses, repairs, and necessary additions and provide sufficient reserve fund against any emergency that may arise. The commission shall from time to time pay to the city the surplus revenue derived from the operation of the plant as is provided in KRS 96.430 and 96.440, as they are made applicable to the plants by KRS 96.520, except that the commission in a city of the second or third class shall pay to the city the surplus revenue derived from the operation of the plant as is provided in KRS 96.535 and any ordinance adopted according to this section. Notwithstanding the foregoing provisions, the utility commission, for the purpose stated in subsection (1) of KRS 96.520, may enter into an agreement for the operation of any of its plants or other facilities.

- (2) Except as provided in KRS 61.070, no person shall be appointed a member of the commission who has, within the last two (2) years before his appointment, held any city, county, state, or federal office, or been a member of any committee of any political party, or who is related within the third degree to the mayor, or a member of a city legislative body. The commission shall not appoint to any subordinate office that it may create any person who is related to any commissioner, to the mayor or to any member of the city legislative body. No officer or employee of the city, whether holding a paid or unpaid office, shall be eligible to be appointed as a member of the commission or to be employed by the commission in any capacity. The members of the commission shall be citizens, taxpayers, and legal voters of the city and shall not at the time of appointment be indebted to the city or be surety on the official bond of any officer of the city. If at any time during his term of office any member of the commission becomes a candidate for or is elected or appointed to any public office, he shall automatically vacate his membership on the commission and another person shall be appointed in his place.
- (3) The city shall pay the cost of securing bonds for the commissioners from a surety company, and each commissioner shall execute bond to be approved by the city legislative body.
- (4) The city legislative body shall fix the salary to be paid each member of the commission at a sum not to exceed two thousand four hundred dollars (\$2,400) per annum. The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall compute by the second Friday in February of every year the annual increase or decrease in the Consumer Price Index of the preceding year by using 1998 as the base year, and the salary of the commissioners may be adjusted at a rate no greater than that stipulated by the ***Governor's Office for Local Development***~~[department]~~.
- (5) The first commissioners appointed under this section shall be appointed one (1) for the term of one (1) year, one (1) for the term of two (2) years and one (1) for the term of three (3) years. Upon the expiration of the first terms, successors shall be appointed for a term of three (3) years. On a commission with five (5) members, not more than two (2) members shall hold concurrent terms of office.
- (6) All commission members appointed subsequent to the initial members shall be appointed by the mayor or chief executive of the municipality, with the approval of the governing body of the municipality.

Section 65. KRS 136.658 is amended to read as follows:

- (1) The Local Distribution Fund Oversight Committee is hereby created and administratively attached to and staffed by the department. The oversight committee shall consist of nine (9) members appointed by the Governor and shall be representative of local government and state government officials. The Governor shall receive recommendations for four (4) members each from the Kentucky Association of Counties and the Kentucky League of Cities from which the Governor shall select two (2) members each. The Governor shall receive recommendations for two (2) members each from the Kentucky School Board Association, the Kentucky Superintendents Association, and the Kentucky School Administrators Association from which the Governor shall select one (1) member each. One (1) member shall be appointed by the Governor to represent the interests of special districts other than school districts. The remaining member shall be the commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~ who shall serve as chairperson of the oversight committee. The members shall serve for a term of three (3) years. Five (5) members of the oversight committee shall constitute a quorum. A member may be removed for cause in accordance with procedures established by the oversight committee and shall serve without salary but shall be reimbursed for expenses in the same manner as state employees. Any vacancy occurring on the oversight committee shall be filled by the Governor for the unexpired term.
- (2) The duties of the oversight committee shall be:

- (a) To monitor the department's implementation and distribution of funds from the gross revenues and excise tax fund and the state baseline and local growth fund and to report its findings to the commissioner of the department; and
 - (b) To act as a finder of fact for the commissioner of the department in disputes in and between political subdivisions, school districts, special districts, and sheriff departments, and between political subdivisions, school districts, special districts, and sheriff departments, and the department regarding the implementation and distribution of funds from the gross revenues and excise tax fund and the state baseline and local growth fund.
- (3) The department shall provide the oversight committee with an annual report reflecting the amounts distributed to each participating political subdivision, school district, special district, or sheriff department.
 - (4) Any political subdivision, school district, special district, or sheriff department may file a complaint and request a hearing with the oversight committee on a form prescribed by the committee. The oversight committee shall give notice to any political subdivision, school district, special district, or sheriff department that may be affected by the complaint. Any political subdivision, school district, special district, or sheriff department intending to respond to the complaint shall do so in writing within thirty (30) days of notice of the complaint.
 - (5) In conducting its business:
 - (a) The oversight committee shall give due notice of the times and places of its hearings;
 - (b) The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses;
 - (c) The oversight committee shall act by majority vote;
 - (d) The oversight committee shall adopt and publish rules of procedure and practice regarding its hearings; and
 - (e) The oversight committee shall make written findings and recommendations to the commissioner of the department.
 - (6) The commissioner of the department shall review the findings and recommendations of the oversight committee and issue a final ruling within sixty (60) days of receipt of the recommendations.
 - (7) The parties in the dispute shall have the rights and duties to appeal any final ruling to the Kentucky Board of Tax Appeals under KRS 131.340.
 - (8) Nothing contained in this section shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the hearing process.

Section 66. KRS 147A.004 is amended to read as follows:

- (1) The ***Governor's Office for Local Development***~~{Department for Local Government}~~ shall administer distribution of state and federal planning funds to area development districts and shall require by administrative regulation financial and operational reports, audits, and other controls as are necessary to assure compliance with state and federal laws relating to funds received by the area development districts.
- (2) The ***Governor's Office for Local Development***~~{Department for Local Government}~~ shall promulgate administrative regulations as will assure statewide coordination of the planning and assistance operations of the area development districts.

Section 67. KRS 147A.020 is amended to read as follows:

- (1) The state local debt officer and the state local finance officer within the ***Governor's Office for Local Development***~~{Department for Local Government}~~ shall exercise the following administrative functions of the state:
 - (a) The state local debt officer shall exercise all administrative functions as provided in the county debt act, KRS 66.280 to 66.390, and administrative functions relating to local government bonds as provided in KRS 66.045; and
 - (b) The state local finance officer shall exercise all administrative functions regarding county and local government budgets, as provided in KRS 68.210 to 68.360.

- (2) The state local debt officer shall have the following powers and duties:
- (a) To require reports from local governments to enable him to adequately provide the technical and advisory assistance authorized by this section. The reports shall provide the necessary information for a complete file on local government debt, which the state local debt officer shall keep open for public inspection at the ***Governor's Office for Local Development***~~[Department for Local Government]~~;
 - (b) To conduct studies in debt management, including ways and means of appraising the terms of alternative bids;
 - (c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government, to enable the state local debt officer to carry out his duties under this section; and
 - (d) To compile and publish annually a report which shall include detailed information on local government long-term debt issued and retired during the previous year and outstanding, and other available statistical data on local government finances.
- (3) The state local finance officer shall have the following powers and duties:
- (a) To coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, general revenue sharing for local government;
 - (b) To provide technical assistance and information to units of local government on matters including, but not limited to, fiscal management, purchases, and contracts; and
 - (c) To conduct training programs to instruct county and other local officials respecting their duties and responsibilities in the collection, expenditure, and management of public moneys subject to their control and jurisdiction.

Section 68. KRS 147A.021 is amended to read as follows:

- (1) The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall have the following powers and duties:
- (a) To require any reports from local governments that will enable it adequately to provide the technical and advisory assistance authorized by this section.
 - (b) To encourage, conduct, or participate in training courses in procedures and practices for the benefit of local officials, and in connection therewith, to cooperate with associations of public officials, business and professional organizations, university faculties, or other specialists.
 - (c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government to enable the ***Governor's Office for Local Development***~~[department]~~ to carry out its duties under this section.
 - (d) At its discretion, to compile and publish annually a report on local government.
- (2) The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, the following programs:
- (a) Demonstration cities and metropolitan development act as amended with the exception of Title I of the Housing and Community Development Act of 1974 as amended through 1981;
 - (b) Farmers Home Administration;
 - (c) Veterans Administration Act as amended, as it pertains to housing.
- (3) The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall provide technical assistance and information to units of local government, including but not limited to:
- (a) Personnel administration;
 - (b) Ordinances and codes;
 - (c) Community development;

- (d) Appalachian Regional Development Program;
 - (e) Economic Development Administration Program;
 - (f) Intergovernmental Personnel Act Program;
 - (g) Land and Water Conservation Fund Program;
 - (h) Area Development Fund Program;
 - (i) ~~Gas System Restoration Project;~~
 - ~~(j)~~ Joint Funding Administration Program;
 - ~~(j)(k)~~ State clearinghouse for A-95 review;
 - ~~(k)(l)~~ The memorandums of agreement with the area development districts to provide management assistance to local governments; and
 - ~~(l)(m)~~ The urban development office.
- (4) The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall exercise all of the functions of the state local finance officer provided in KRS Chapters 66, 68, and 131 relating to the control of funds of counties, cities, and other units of local government.
- (5) Upon request of the Administrative Office of the Courts, the ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall evaluate the financial condition of any local unit of government selected to participate in a court facilities construction or renovation project under KRS 26A.160 and shall certify to the Administrative Office of the Courts the local unit of government's ability to participate in the project.

Section 69. KRS 147A.025 is amended to read as follows:

- (1) Except as provided in subsection (7) of this section, the ***Governor's Office for Local Development***~~[Department for Local Government]~~ with the advice and approval of the state local finance officer annually shall conduct a program to instruct county clerks, sheriffs, jailers, and county treasurers respecting their duties and responsibilities in the collection and expenditure of public moneys, subject to their control and jurisdiction.
- (2) The ***Governor's Office for Local Development***~~[department]~~ with the advice and approval of the state local finance officer shall establish the content and publish instructional materials essential to implementing this program. Subsequent to every regular and extraordinary session of the General Assembly, the ***Governor's Office for Local Development***~~[department]~~ with the state local finance officer shall review and revise, if necessary, the program when it is found not to be consistent with state law.
- (3) The ***Governor's Office for Local Development***~~[department]~~ may assess a charge to any person requesting copies of instructional materials published as provided by this section to cover actual costs of printing and handling these materials, except that no county official shall be charged for instructional materials provided for his use. Funds accruing from the sale of instructional materials shall be paid into the State Treasury, and the State Treasurer shall pay these funds into an account of the ***Governor's Office for Local Development***~~[department]~~ to defray the costs of printing and handling these materials.
- (4) The commissioner of the ***Governor's Office for Local Development***~~[department]~~ with the advice and approval of the state local finance officer may prescribe completion standards for this program, and may, subject to subsection (6) of this section, establish the number, type and sequence of instructional sessions to be conducted by the ***Governor's Office for Local Development***~~[department]~~; but the commissioner of the ***Governor's Office for Local Development***~~[department]~~ shall not require the attendance of any county official, nor shall he prescribe any requirement or standard that restricts or impairs a county official or elected candidate in the lawful pursuit or conduct of the office to which he is elected.
- (5) The ***Governor's Office for Local Development***~~[department]~~ shall notify in advance each county clerk, sheriff, jailer, and county treasurer respecting instructional session pertinent to his office. Notification shall be by mail, and it shall be posted no later than twenty-one (21) days prior to the instructional session. At a minimum, the notice shall give the date, time, place and title of the instruction session.

- (6) The ***Governor's Office for Local Development***~~[department]~~ shall conduct this program by providing a one (1) day session at various locations throughout this state in order to minimize the travel expenses of those officials attending, provided that the aggregate number of all sessions shall not exceed five (5) during any calendar year. Except as provided in subsection (7) of this section, the ***Governor's Office for Local Development***~~[department]~~ may commence instruction anytime during a calendar year.
- (7) The ***Governor's Office for Local Development***~~[department]~~ shall not conduct a program as provided by this section during any calendar year when a general election is held for every constitutional county office. The ***Governor's Office for Local Development***~~[department]~~, however, shall commence instruction for the succeeding year within eighty (80) days following said general election.
- (8) Every county official who attends an instructional session shall be paid his actual and necessary expenses in attending from the operating funds of his office.
- (9) In fulfilling the requirements of this section, the ***Governor's Office for Local Development***~~[department]~~ shall confer with and coordinate its duties and responsibilities with the Finance and Administration Cabinet and the Auditor of Public Accounts. The ***Governor's Office for Local Development***~~[department]~~ shall also confer with those state universities whose mission statements mandate their participation in the training of public officials, the state associations for those officials listed in subsection (1) of this section, and the Kentucky Association of Counties, respecting the implementation of this section.

Section 70. KRS 147A.028 is amended to read as follows:

- (1) In enacting a parks establishment aid law, it is the intention of the General Assembly to supplement local efforts to establish park and recreational facilities. The inadequacy of present facilities and the high cost of acquisition and establishment of park recreational facilities are hereby declared to be matters of public interest and concern and vital to the promotion of the health, welfare and industrial development of the inhabitants of the Commonwealth.
- (2) The commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall cause to be established in the Treasury a special fund to be known as the local government parks and recreational facilities fund, to be administered by the commissioner. The fund shall be comprised of grants, contributions, appropriations and intergovernmental transfers. Moneys in the fund shall not lapse at the end of the fiscal year.
- (3) The commissioner may, when he determines that a proposed local government plan for a park or other recreational facility would serve the public interest, use moneys from the local government parks and recreational facilities fund to aid local governmental units in their acquisition and establishment of local parks and recreational facilities, provided that local governmental units must provide matching funds for the project. The ***Governor's Office for Local Development***~~[Department for Local Government]~~ may grant an amount up to five hundred thousand dollars (\$500,000) for any one (1) project, which amount shall not exceed fifty percent (50%) of the cost of the entire project. For the purposes of this section, local governmental units shall mean county governments, urban-county government, and governments of cities of any class. Title to parks and recreational facilities acquired by the use of funds authorized by this section shall vest in the local governmental unit which proposed the project and provided the matching funds.
- (4) In September of each year, the commissioner shall determine the amount of funds available for distribution by December 31 of that same year. The commissioner may prescribe standards for determining the amounts to be granted for local projects and any administrative regulations as may be necessary to implement the provisions of this section. Funds granted by the ***Governor's Office for Local Development***~~[department]~~ shall be spent by the local governing authorities only for the acquisition and establishment of parks and recreational facilities or major improvements or additions to existing parks and shall not be used for operating or maintenance expenses.

Section 71. KRS 147A.029 is amended to read as follows:

- (1) The commissioner of the ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall administer and determine the disbursement of funds for the Local Match Participation Program.
- (2) Funds appropriated for the Local Match Participation Program may be used as matching funds by local governments for flood-related projects and straight sewage pipe removal projects with:

- (a) The United States Army Corps of Engineers;
 - (b) The Federal Emergency Management Agency (FEMA); and
 - (c) Other federal government grant and loan programs requiring local matching funds.
- (3) Any general fund appropriations made for the Local Match Participation Program may be used for flood control planning and mitigation activities and straight sewage pipe removal and mitigation activities.

Section 72. KRS 147A.031 is amended to read as follows:

- (1) The ***Governor's Office for Local Development***~~[Department for Local Government]~~, in cooperation with cities, counties, waste management districts, waste industries, the Environmental and Public Protection Cabinet, and the Environmental Quality Commission, shall develop procedures designed to resolve conflicts resulting from municipal solid waste management facility siting and operation. The procedures shall address:
- (a) Resolution of conflicts associated with multijurisdictional municipal solid waste management facilities, including the use of such techniques as negotiation, mediation, or arbitration to address issues including, but not limited to, host community compensation and collection and disposal fees; and
 - (b) Resolution of issues, except those relating to permit conditions imposed by the cabinet, resulting from municipal solid waste management facility siting and operation, including the use of such techniques as negotiation, mediation, or arbitration to address concerns of those persons and landowners who are directly affected by the facility's location and operation. Issues which may be addressed include, but are not limited to, the following:
 - 1. Operational issues, such as hours of operation;
 - 2. Recycling and composting efforts that may be implemented;
 - 3. Protection of property values;
 - 4. Traffic routing and road maintenance; and
 - 5. Establishment of local advisory committees.
- (2) The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall adopt administrative regulations to implement the provisions of subsection (1) of this section.
- (3)~~[By January 1, 1992, the Department for Local Government shall report to the Governor and to the General Assembly the recommendations developed under subsection (1) of this section.]~~
- (4)~~]~~ Nothing in this section shall be construed to abridge any rights or remedies provided by KRS Chapters 109 and 224, or at common law.

Section 73. KRS 147A.060 is amended to read as follows:

There shall be in each area development district a board of directors. The composition of the board and the terms and appointments of its members in each district shall be specified by administrative regulation promulgated by the ***Governor's Office for Local Development***~~[Department for Local Government]~~ in accordance with KRS Chapter 13A. The designee of a mayor or county judge/executive shall be a member of the designator's respective legislative body or their staff. Other persons who are not elected officials or members of their staffs may be designated as representatives with the consent of that body. The ***Governor's Office for Local Development***~~[Department for Local Government]~~ in specifying the composition of the board shall conform to applicable federal requirements. A person who is a state officer, a deputy state officer, or a member of the General Assembly may serve only in a nonmember advisory capacity to the board of directors of an area development district. An area development district board of directors shall notify legislators of the provisions of this section and of their right to participate in the activities of the area development district. If a legislator chooses to participate in accordance with this section, the area development district shall send meeting notices to that legislator at the same time board members are notified of the meetings.

Section 74. KRS 147A.250 is amended to read as follows:

A Railtrail Development Office is hereby created within the ***Governor's Office for Local Development***~~[Department for Local Government]~~. The ***Governor's Office for Local Development***~~[department]~~ shall insure that the office has the necessary expertise to carry out the requirements imposed upon it by this section. Among other railtrail functions and duties which may be assigned to it, the ***Railtrail Development*** Office shall carry on at least the following responsibilities:

- (1) The office shall monitor the proceedings of the United States Department of Transportation's Surface Transportation Board and shall disseminate to interested entities in Kentucky information regarding those proceedings of interest to railtrail conversion or policy in the Commonwealth. If a railroad applies to the Surface Transportation Board for authority to discontinue service over or abandon a railroad corridor in the Commonwealth, the office shall immediately notify those political subdivisions through which the corridor passes and any interested state agency of the proceedings and the potential for trail development of the corridor. Notice shall also be sent to the county judge/executive of each county through which the proposed abandonment passes, who shall distribute copies of the notice to each member of the chief legislative body of the county government at the next regularly scheduled meeting of that legislative body. The office shall also send a copy of the notice to each soil and water conservation district through which the abandonment passes. If time is of the essence and it appears that the corridor is a suitable candidate for conversion to a railtrail and that no other railtrail interested entity will be participating in the federal proceeding, the office shall take those steps necessary to cause a railbanking or public use condition to be imposed in the federal proceeding;
- (2) The office shall assist any requesting political subdivision or agency of state government with assistance on any application to the Surface Transportation Board regarding an abandoned or about-to-be-abandoned railroad corridor, including any requests for railbanking or imposition of public use conditions;
- (3) The office shall coordinate and promote railtrail development efforts among the various agencies of state government, including the Department of Parks and the Transportation Cabinet. While this subsection does not confer upon the office any powers beyond those that it may ordinarily possess, every entity of state government shall cooperate with the office to the extent practicable under the circumstances;
- (4) The office shall furnish to requesting political subdivisions assistance in applying to available federal, state, or local funding sources for funds to be used for the process of converting railroad corridors into public use trails; and
- (5) The office may apply for federal, state, or private grants or other forms of financial assistance to carry on its mission.

Section 75. KRS 148.022 is amended to read as follows:

- (1) The ***Governor's Office for Local Development***~~[Department for Local Government]~~ shall administer and operate the outdoor recreation programs of the state and shall be responsible for developmental planning and the administration of United States Bureau of Outdoor Recreation funds.
- (2) All functions of the Commonwealth relating to the Breaks Interstate Park shall be attached to the Commerce Cabinet for administrative purposes.

Section 76. KRS 148.690 is amended to read as follows:

- (1) The department shall review all formal declarations of railroad right-of-way abandonments by the Surface Transportation Board or other agency with jurisdiction and may review former railroad corridors for possible inclusion in the state trails system. The commissioner shall, within three (3) years after the route of a trail or trail segment included in the system has been located, determine the boundaries of the right-of-way to be associated with that trail. Such boundaries shall be established in such a manner that they protect the scenic value of the trail.
- (2) The commissioner is authorized to develop effective procedures to assure that, wherever practicable, utility rights-of-way, abandoned railroad corridors, or similar properties having value for trail purposes may be made available for such use; however, the commissioner shall take into consideration the rights of adjacent property owners in the development of any such procedures. Other departments of state government having jurisdiction, control over, or information concerning the use, abandonment, or disposition of rights-of-way, railroad corridors, and similar properties that may be suitable for trail purposes shall cooperate with the commissioner in the transfer of these rights for trail use. These procedures shall include, at a minimum, that, for every railroad corridor that is the subject of a request for federal authority to discontinue service or for federal regulatory abandonment, the commissioner shall evaluate the potential of converting that corridor into a railtrail. The commissioner shall cause a preliminary review to be completed within thirty (30) days of the publication of the request for federal authority in the Federal Register. The commissioner shall cause a final review to be completed ninety (90) days after the publication of the request for federal authority in the Federal Register. The commissioner shall timely transmit copies of these reviews to the Legislative Research Commission and to the Commonwealth's Railtrail Development Office in the ***Governor's Office for Local***

Development~~[Department for Local Government]~~ as they are completed. If either review indicates the possibility of converting the corridor into a railtrail, the commissioner may participate in the federal proceeding to request that the corridor be railbanked in accordance with federal law or to request the imposition of a public use condition.

Section 77. KRS 152.055 is amended to read as follows:

The **Governor's Office for Local Development**~~[Department for Local Government]~~ shall have responsibility for the administration and coordination of Appalachian regional development programs and economic development administration programs.

Section 78. KRS 154.33-603 is amended to read as follows:

- (1) The corporation shall be governed by a board of directors consisting of seven (7) voting members and three (3) ex officio members as follows:
 - (a) Three (3) members representing the three (3) county governments, one (1) to be appointed by the county judge/executive of Knott County, one (1) to be appointed by the county judge/executive of Letcher County, and one (1) to be appointed by the county judge/executive of Perry County;
 - (b) Three (3) members appointed by the Governor, one (1) each from Knott, Letcher, and Perry Counties;
 - (c) The secretary of the Finance and Administration Cabinet, or his or her designee, as a voting member;
 - (d) The secretary of the Commerce Cabinet, or his or her designee, as an ex officio, nonvoting member;
 - (e) The secretary of the Cabinet for Economic Development, or his or her designee, as an ex officio, nonvoting member; and
 - (f) The commissioner of the **Governor's Office for Local Development**~~[Department for Local Government]~~, or his or her designee, as an ex officio, nonvoting member.
- (2) Appointed members shall serve staggered terms of four (4) years beginning August 1, 2000, except that of the initial appointments:
 - (a) One (1) member appointed by the Governor and the member appointed by the county judge/executive of Knott County shall each serve a term of four (4) years;
 - (b) One (1) member appointed by the Governor and the member appointed by the county judge/executive of Letcher County shall each serve a term of three (3) years;
 - (c) The one (1) member appointed by the county judge/executive of Perry County shall serve a term of two (2) years; and
 - (d) One (1) member appointed by the Governor shall serve a term of one (1) year.
- (3) A member may be removed by the appointing authority only for neglect of duty, misfeasance, or malfeasance and after being afforded an opportunity for a hearing in accordance with KRS Chapter 13B.
- (4) Members of the board shall serve without compensation but shall be reimbursed for actual and necessary travel expenses incurred in the performance of their duties. The reimbursement shall be in accordance with administrative regulations promulgated under KRS Chapter 13A by the Finance and Administration Cabinet.

Section 79. KRS 164.3571 is amended to read as follows:

- (1) The Governmental Services Center may, upon request~~[,]~~ of the **Governor's Office for Local Development**~~[Department for Local Government]~~, and as financial and staff resources permit, develop, coordinate, implement, assist, and conduct employee and management training programs, seminars, and conferences, for agencies, departments, divisions, boards, and commissions of county and city government, and any other political subdivisions of the state.
- (2) The Governmental Services Center may enter into contractual agreements with county and city governments and other political subdivisions as necessary to allow the Governmental Services Center to properly perform its duties and responsibilities as established by KRS 164.3571 to 164.3573.
- (3) Any agency of a county, city, or other political subdivision whose employees receive the benefit of the Governmental Services Center's services, shall reimburse the Governmental Services Center for those costs and expenses which it incurs as a result of providing these services.

Section 80. KRS 171.381 is amended to read as follows:

- (1) The Kentucky Heritage Council shall be dedicated to the preservation and protection of all meaningful vestiges of Kentucky's heritage for succeeding generations, and in pursuit of this dedication it shall engage in and concern itself with worthy projects and other matters related to the conservation and continuing recognition of buildings, structures, sites, and other landmarks associated with the archaeological, cultural, economic, military, natural, political, or social aspects of Kentucky's history.
- (2) The duties and functions of the council shall be to:
 - (a) Review and recommend appropriate projects and programs to insure the proper recognition, preservation, and protection of matters related to Kentucky's heritage, particularly those in the nature of or associated with real property;
 - (b) Advise, consult, and cooperate generally with state, local, and national officials and agencies to accomplish the purposes to which the council is dedicated, and specifically with the Kentucky Department of Parks and Historical Society in matters of common concern;
 - (c) Encourage, promote, and coordinate historic preservation programs being conducted in Kentucky by other agencies or groups, public and private; and
 - (d) Prepare and maintain an inventory or survey of Kentucky's resource of historic buildings, sites, structures, and other landmarks, and list in an official roll those such landmarks which possess statewide or national significance.
- (3) The council may:
 - (a) Accept grants or other funds or property from any available source, public or private;
 - (b) Employ, with the approval of the Governor, such staff as may be necessary. Any member of such staff shall be entitled to compensation under KRS Chapter 18A, and may be reimbursed for necessary and actual expenses in accordance with the provisions of KRS Chapters 44 and 45;
 - (c) Enter into such contractual relationships as may be necessary;
 - (d) Acquire real property, by gift or devise or by purchase pursuant to the provisions of KRS 45A.045, and hold the same in the name of the Commonwealth for the use and benefit of the council;
 - (e) Initiate its own projects of an appropriate nature, and undertake or otherwise engage in joint projects with other agencies or groups, public or private; and
 - (f) Adopt such rules and regulations as may be necessary and incidental to the performance of the council's duties and functions.
- (4) The receipt, control, and expenditure of funds shall be subject to the general provisions of the Kentucky Revised Statutes governing financial administration of all state agencies.
- (5) No provision of this section shall be construed as repealing any of the laws of the Commonwealth relating to the preservation, protection, and recognition of historical matters, but shall be held and construed as ancillary and supplemental thereto.
- (6) The council shall receive applications, interview and recommend to the Governor three (3) persons as nominees for appointment as the director of the Heritage Division, Commerce Cabinet. The director of the Heritage Division shall be the state historic preservation officer.
- (7) The responsibilities of the state historic preservation officer shall include:
 - (a) Development for the State Historic Preservation Program;
 - (b) Direction of a comprehensive statewide survey of historic properties;
 - (c) Nomination of historic properties to the National Register of Historic Places;
 - (d) Cooperation in the development of effective working relationships with federal, state, and local agencies that participate in the management of historic properties and in project planning that may affect historic properties;

- (e) Cooperation in the integration of historic preservation planning with all levels of planning;
- (f) Cooperation in the development and maintenance of a review procedure for publicly funded, assisted, and licensed undertakings that may affect historic properties within the state;
- (g) Participation in the review of federal, federally assisted, and federally licensed undertakings that may affect historic properties included in or eligible for inclusion in the National Register under Section 106 of the National Historic Preservation Act and Executive Order 11593;
- (h) Assisting federal agencies in fulfilling their historic preservation responsibilities under federal law and regulations;
- (i) Liaison with organizations of professional archaeologists, historians, architects, architectural historians, planners, and others concerned with historic preservation;
- (j) Development and operation of a program of public information and education concerning the preservation program;
- (k) Administration of the grants program within the state;
- (l) Preparation and maintenance of a comprehensive statewide historic preservation plan; and
- (m) The immediate transmittal to the Department of Parks and to the Commonwealth's Railtrail Development Office in the ***Governor's Office for Local Development***~~Department for Local Government~~ of any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

Section 81. KRS 174.130 is amended to read as follows:

- (1) The Transportation Cabinet, including any agency or other unit of government attached to the cabinet, shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the ***Governor's Office for Local Development***~~Department for Local Government~~ any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.
- (2) The Transportation Cabinet shall keep a record of railroad lines in the Commonwealth of Kentucky, including both lines that have been abandoned through the federal government's regulatory abandonment process and those where any railroad property interest in the railroad corridor itself has been abandoned under Kentucky law. The cabinet shall annually publish an updated map showing the location and as much information as to the status of these lines as practicable. The record shall include, inasmuch as possible:
 - (a) A description of the line and its location;
 - (b) The current or last railroad owner of the line;
 - (c) The operator of the line;
 - (d) The addresses and phone numbers for the owners and operators of the lines;
 - (e) Whether the owner of the line has received authority from the Federal Government to discontinue service over the line;
 - (f) Whether the owner of the line has received authority from the Federal Government to abandon the line;
 - (g) Whether the owner of the line has consummated any authority granted by the Federal Government to discontinue service over the line or to abandon the line;
 - (h) Whether the line has been railbanked under either federal or state law; and
 - (i) Any other information the cabinet deems pertinent and useful to the public.

Section 82. KRS 177.360 is amended to read as follows:

- (1) Except as provided in subsection (5) of this section, the Department of Intergovernmental Programs shall allocate the funds set apart under KRS 177.320(1) for construction, reconstruction, and maintenance of state-maintained secondary and rural highways as follows:

- (a) One-fifth (1/5) shall be apportioned equally among the one hundred twenty (120) counties.
 - (b) One-fifth (1/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio which the rural population of each county bears to the total rural population of the state. "Rural population" as used here means the population in a county outside cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more as shown by the most recent decennial census of the United States Bureau of the Census, and county population shall be determined by the most recent decennial census of the United States Bureau of the Census.
 - (c) One-fifth (1/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio that the public road mileage outside of cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more bears to the total mileage of such roads for the entire state.
 - (d) Two-fifths (2/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio which the square-mile rural area of the county bears to the total square-mile rural area of the state. "Rural area" as used here means that area of the county outside of cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more and shown by the most recent decennial census of the United States Bureau of the Census.
- (2) A sum not exceeding six percent (6%) of the allocation provided by KRS 177.320(1) to each county shall be deducted at the beginning of each fiscal year and adjusted quarterly to cover the maintenance, administrative, engineering, and other costs of the program.
 - (3) Of the total amount apportioned by the provisions of this section, a sum not exceeding six percent (6%) may be deducted and placed by the Department of Intergovernmental Programs in a special emergency account to be expended at the direction of the commissioner to meet unforeseen emergencies on rural and secondary roads and bridges.
 - (4) Apportionments as required by the provisions of this section shall be made on the basis of revenue estimates supplied by the Finance and Administration Cabinet and adjusted quarterly in accordance with the most recent revision of the estimates by the Finance and Administration Cabinet.
 - (5) Any county eligible to receive county road aid moneys in accordance with KRS 177.320 and this section shall be required to submit a uniform financial information report to the **Governor's Office for Local Development**~~{Department for Local Government}~~ in accordance with KRS 65.905 before any payment of county road aid funds shall be made. The **Governor's Office for Local Development**~~{Department for Local Government}~~ shall notify the Department of Intergovernmental Programs no later than March 1 annually of any county that has not submitted a uniform financial information report. The Department of Intergovernmental Programs shall, upon notification by the **Governor's Office for Local Development**,~~{department}~~ immediately suspend all county road aid moneys to the county until the county complies with the provisions of KRS 65.900 to ~~65.925~~~~{65.915}~~ and submits the uniform financial information report to the **Governor's Office for Local Development**~~{Department for Local Government}~~. The **Governor's Office for Local Development**~~{department}~~ shall immediately notify the Department of Intergovernmental Programs to reinstate county road aid moneys to any county affected by this subsection as soon as the county submits the uniform financial information report.

Section 83. KRS 177.366 is amended to read as follows:

- (1) Except as provided in subsection (8) of this section, on and after July 1, 1980, the Finance and Administration Cabinet shall allocate to each incorporated city and "unincorporated urban place" its pro rata share of the funds set apart for construction, reconstruction, and maintenance of urban roads and streets on the basis of the ratio which the population in the incorporated cities and in "unincorporated urban places" bears to the total population in incorporated cities and in "unincorporated urban places" of the state. "Unincorporated urban places" as used here, means an area as defined in KRS 81.015, and any area outside of incorporated cities, which area has a population of 2,500 or more as shown by the most recent decennial census of the United States Bureau of the Census, and all populations shall be determined by the most recent decennial census of the United States.
- (2) Any area which becomes incorporated after December 31, 1970, shall not be eligible to participate in the Municipal Aid Program until the beginning of the second fiscal year following its incorporation and population certification. It shall be the responsibility of the newly incorporated area to provide the Finance and

Administration Cabinet with documentation from the United States Bureau of the Census showing the population of the newly incorporated area as it existed at the time of the last decennial census.

- (3) In the event the newly incorporated area cannot obtain a population count from the Bureau of the Census, it shall not be eligible to participate in the Municipal Aid Program until the next decennial census.
- (4) If an incorporated city, whose incorporation took place prior to December 31, 1970, annexes additional area, the population of the annexed area will not be counted in the allocation of municipal aid funds until the beginning of the second fiscal year following annexation and population certification.
- (5) It shall be the responsibility of the incorporated city to provide the Finance and Administration Cabinet with documentation from the United States Bureau of the Census showing the population for the annexed area as it existed at the time of the last decennial census.
- (6) If the incorporated area cannot obtain a population count from the Bureau of the Census, the annexed area's population shall not be eligible to be counted in the distribution of the municipal aid fund. However, the streets included in the annexed areas shall be eligible to receive work through this program.
- (7) Apportionments as required by the provisions of this section shall be made on the basis of revenue estimates supplied by the Office of State Budget Director and shall be adjusted quarterly in accordance with the most recent revision of the estimates by the Office of State Budget Director.
- (8) Any local government eligible to receive municipal road aid moneys pursuant to KRS 177.365 to 177.369 shall be required to submit a uniform financial information report to the **Governor's Office for Local Development**~~Department for Local Government~~ pursuant to KRS 65.905 before any payment of municipal road aid funds shall be made. The **Governor's Office for Local Development**~~Department for Local Government~~ shall notify the Finance and Administration Cabinet no later than March 1 annually of any local government that has not submitted a uniform financial information report. The Finance and Administration Cabinet shall, upon notification by the **Governor's Office for Local Development**~~Department~~, immediately suspend all municipal road aid moneys to the local government until the local government complies with the provisions of KRS 65.900 to ~~65.925~~~~65.915~~ and submits the uniform financial information report to the **Governor's Office for Local Development**~~Department for Local Government~~. The **Governor's Office for Local Development**~~Department~~ shall immediately notify the Finance and Administration Cabinet to reinstate municipal road aid moneys to any local government affected by this subsection as soon as the local government submits the uniform financial information report.

Section 84. KRS 179.410 is amended to read as follows:

The **Governor's Office for Local Development**~~Department for Local Government~~ shall allocate the sum appropriated by the General Assembly from the funds arising under the provisions of KRS 177.320(2), for the construction, reconstruction, improvement, and maintenance of county roads and bridges in accordance with the provisions of KRS 177.360(1).

Section 85. KRS 179.415 is amended to read as follows:

- (1) On and after the fiscal year beginning July 1, 1980, and each fiscal year thereafter, the **Governor's Office for Local Development**~~Department for Local Government~~ shall pay to each county its pro rata share of any funds appropriated and any unexpended balance of funds appropriated for construction, reconstruction, improvement, and maintenance of county roads and bridges. During each fiscal year, the **Governor's Office for Local Development**~~Department~~ shall make quarterly payments to each such county of the funds allocated in accordance with KRS 177.369.
- (2) The expenditure of any money received by the county in accordance with the provisions of subsection (1) of this section shall be made solely for the purpose of construction, reconstruction, improvement, and maintenance of county roads and bridges.
- (3) Any county which has received any money in accordance with the provisions of subsection (1) of this section shall retain all records of the expenditure of the money for a period of five (5) years and said records shall be subject to audit by the **Governor's Office for Local Development**~~Department for Local Government~~ for said period of time in order to determine the proper expenditure of said money for the purpose required by KRS 179.410.

Section 86. KRS 198A.030 is amended to read as follows:

- (1) There is hereby created and established an independent, de jure municipal corporation and political subdivision of the Commonwealth which shall be a public body corporate and politic to be known as the Kentucky Housing Corporation.
- (2) The Kentucky Housing Corporation is created and established as a de jure municipal corporation and political subdivision of the Commonwealth to perform essential governmental and public functions and purposes in improving and otherwise promoting the health and general welfare of the people by the production of residential housing in Kentucky.
- (3) The corporation shall be governed by a board of directors, consisting of thirteen (13) members, five (5) of whom shall be the Lieutenant Governor, the secretary of the Finance and Administration Cabinet, the commissioner of the *Governor's Office for Local Development* ~~Department for Local Government~~, the Attorney General, and the secretary of the Cabinet for Economic Development, or their duly appointed designees, as public directors, and eight (8) private directors who shall be appointed by the Governor, subject to confirmation by the Senate as provided by KRS 11.160, as follows:
 - (a) One (1) private director representing the interests of financial lending institutions located within the Commonwealth;
 - (b) One (1) private director representing the interests of the manufactured housing industry within the Commonwealth;
 - (c) One (1) private director representing the interests of real estate practitioners licensed by the Kentucky Real Estate Commission;
 - (d) One (1) private director representing the interests of the homeless population within the Commonwealth;
 - (e) One (1) private director representing the interests of local government;
 - (f) One (1) private director representing the interests of the home construction industry in the Commonwealth;
 - (g) One (1) private director representing the interests of consumers in the Commonwealth; and
 - (h) One (1) private director representing the interests of the Kentucky State Building Trades Council.
- (4) Private directors appointed by the Governor may include previous members of the board, and members may be reappointed for successive terms. All appointments shall be for four (4) years, and the appointees shall serve until a qualified successor is appointed.
- (5) In case of a vacancy, the Governor may appoint a person for the vacancy to hold office during the remainder of the term. A vacancy shall be filled in accordance with the requirement and procedures for appointments.
- (6) The Governor may remove any private director whom he may appoint in case of incompetency, neglect of duty, gross immorality, or malfeasance in office; and he may declare his office vacant and may appoint a person for the vacancy as provided in this section.
- (7) The Governor shall designate a director of the corporation to serve as chairman. The term of the chairman shall extend to the earlier of either the date of expiration of his then current term as a director of the corporation or a date six (6) months after the expiration of the then current term of the Governor designating the chairman.
- (8) The board of directors shall annually elect one (1) of its members as vice chairman. The board of directors shall also elect or appoint, and prescribe the duties of, other officers the board of directors deems necessary or advisable, including an executive director and a secretary, and the board of directors shall fix the compensation of the officers.
- (9) The executive director shall administer, manage, and direct the affairs and business of the corporation, subject to the policies, control, and direction of the board of directors of the corporation. The secretary of the corporation shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, the minute book or journal of the corporation, and its official seal. The secretary shall have authority to cause copies to be made of all minutes and other records and documents of the corporation and to give certificates under the official seal of the corporation to the effect that copies are true copies, and all persons dealing with the corporation may rely upon the certificates.

- (10) A majority of the board of directors of the corporation shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. A majority shall be determined by excluding any existing vacancies from the total number of directors.
- (11) Action shall be taken by the corporation upon a vote of a majority of the directors present at a meeting at which a quorum shall exist called upon three (3) days' written notice to each director or upon the concurrence of at least eight (8) directors.
- (12) Each private director shall be entitled to a fee of one hundred dollars (\$100) for attendance at each meeting of the board of directors or duly called committee meeting of the board.

Section 87. KRS 198A.035 is amended to read as follows:

- (1) The Kentucky Housing Corporation shall oversee the development and implementation of the Kentucky housing policy. The corporation shall create an advisory committee on housing policy consisting of the following:
 - (a) The following nine (9) state government members, or their duly-appointed designees: the commissioner of education; commissioner of the ***Governor's Office for Local Development***~~Department for Local Government~~; executive director of the Office of Housing, Buildings and Construction; secretary of the Environmental and Public Protection Cabinet; secretary of the Cabinet for Health and Family Services; executive director of the Human Rights Commission; state historic preservation officer; secretary of the Transportation Cabinet; and executive director of the Kentucky Housing Corporation.
 - (b) At-large members shall be appointed by the chairman of the board of directors of the Kentucky Housing Corporation. There shall be one (1) at-large representative for each of the following:
 - 1. Public housing authorities;
 - 2. Mortgage banking industry;
 - 3. Manufactured housing industry;
 - 4. Realtors;
 - 5. Homebuilders;
 - 6. Urban nonprofit housing organizations;
 - 7. Rural nonprofit housing organizations;
 - 8. Urban advocates for the homeless;
 - 9. Rural advocates for the homeless;
 - 10. Residents of economically-diverse urban neighborhoods;
 - 11. Residents of economically-diverse rural neighborhoods;
 - 12. Rental property providers;
 - 13. Advocates for persons with physical disabilities;
 - 14. Advocates for persons with mental disabilities;
 - 15. The Kentucky State Building Trades Council;
 - 16. The Kentucky League of Cities; and
 - 17. The Kentucky Association of Counties.
 - (c) One (1) member of the Senate and one (1) member of the House of Representatives.
- (2) State government members and General Assembly members shall serve on the advisory committee during the term of their elected or appointed state government positions. Members appointed as provided by subsection (1)(b) of this section shall be appointed for four (4) year terms, except that initially five (5) shall be appointed for two (2) year terms, six (6) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms.

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

Section 88. KRS 198B.040 is amended to read as follows:

The Kentucky Board of Housing, Buildings and Construction shall have the following general powers and duties:

- (1) To conduct or cause to be conducted studies to determine the needs of the building industry of Kentucky;
- (2) To conduct or cause to be conducted or participate in studies of the costs of the various factors of building construction and use of buildings, and to recommend programs and procedures which will minimize the cost of buildings, including the use of energy, while maintaining safety, durability, and comfort;
- (3) To administer regulatory legislation relating to buildings and construction;
- (4) To assume administrative coordination of the various state construction review programs and to cooperate with various federal, state, and local agencies in the programs as they relate to buildings and construction;
- (5) To assume administration and coordination of various state housing programs to include:
 - (a) Devising and implementing procedures, in conjunction with the ***Governor's Office for Local Development***~~(Department for Local Government)~~, for attaining and maintaining an accurate count of the housing inventory in Kentucky, including information on the age, physical condition, size, facilities, and amenities of this housing, and housing constructed and demolished each year;
 - (b) Designing programs coordinating the elements of housing finance, production, maintenance, and rehabilitation for the purpose of assuring the availability of safe, adequate housing in a healthful environment for all Kentucky citizens;
 - (c) Establishing or causing to be established public information and educational programs relating to housing, to include informing Kentucky citizens about housing and housing related programs that are available on all levels of government;
 - (d) Designing and administering, or participating in the design and administration of educational programs to prepare low income families for home ownership, and counseling them during their early years as homeowners;
 - (e) Promoting educational programs to assist sponsors in the development and management of low and moderate income housing for sale or rental;

- (f) Cooperating with various federal, state, and local agencies in their programs as they relate to housing; and
 - (g) Conducting or causing to be conducted studies to determine the housing preferences of Kentucky citizens and the present and future housing requirements of the state;
- (6) To recommend state building industry policies and goals to the Kentucky General Assembly;
 - (7) To adopt and promulgate a mandatory uniform state building code, and parts thereof, which shall establish standards for the construction of all buildings, as defined in KRS 198B.010, in the state;
 - (8) To promulgate administrative regulations providing for the proper construction of public water purification plants, other than the water treatment equipment and systems in such plants; provided, however, that any such regulations must require that applications for permits to build public water purification plants will be submitted by the office to the Environmental and Public Protection Cabinet for that cabinet's comments. Any such regulations shall require the Environmental and Public Protection Cabinet's comments to be completed and submitted to the office within sixty (60) days;
 - (9) To promulgate administrative regulations providing for the proper construction of sewage treatment plants, other than the sewage treatment equipment and systems in such plants; provided, however, that any such regulations must require that applications for permits to build public sewage treatment plants will be submitted by the office to the Environmental and Public Protection Cabinet for that cabinet's comments. Any such regulations shall require the Environmental and Public Protection Cabinet's comments to be completed and submitted to the office within sixty (60) days; and
 - (10) To promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures.
- (11)
 - (a) As used in this subsection, "main board" means the Kentucky Board of Housing, Buildings and Construction.
 - (b) If the main board has proposed a new or amended administrative regulation that directly and clearly relates to the work of a profession, class of workers, or industry that is under the authority of any board or advisory committee that is created by statute and is controlled, superseded, administratively attached, or affiliated with the main board, the main board shall not promulgate the proposed administrative regulation without first receiving comments from the affected board or advisory committee, subject to the restrictions of paragraph (c) of this subsection.
 - (c)
 - 1. If a proposed administrative regulation affects a board or advisory committee that qualifies under paragraph (b) of this subsection, the main board shall distribute the proposed administrative regulation to the board or advisory committee.
 - 2. The affected board or advisory committee shall be granted a maximum of sixty (60) days to submit its comments on the proposed regulatory change. If the administrative regulation is a new emergency regulation, the affected board or advisory committee shall be granted a maximum of thirty (30) days to submit its comments on the proposed regulatory change.
 - 3. The time limits in this paragraph shall begin from the day the main board submits the regulatory change and sets a date for a proposed hearing for the comments of the affected board or advisory committee. If the board or advisory committee is already scheduled to meet at a time that will give it an adequate opportunity to review the regulation and respond, the hearing may be held at that meeting.
 - 4. If a board or advisory committee is not scheduled to meet or meets only at the call of the main board, the main board shall arrange for the board or advisory committee to meet at a time that will allow the board or advisory committee an adequate opportunity to review and comment on the regulation within the time limit. If the affected board or advisory committee fails to comment within the time limit, the main board may proceed with the administrative changes at its discretion.
 - (d) To the extent that any other statute relating to the main board's authority to promulgate administrative regulations conflicts with this section, this section shall take precedence.

- (e) If a board or advisory committee chooses to produce written comments, those comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A.
- (12) Any power or limitation relating to administrative regulations promulgated by the Kentucky Board of Housing, Buildings and Construction that are subject to subsection (11) of this section shall also apply to the office and executive director as described in KRS 198B.030(9) and (10).

Section 89. KRS 224A.030 is amended to read as follows:

- (1) There is hereby created the Kentucky Infrastructure Authority, which authority shall be a body corporate and politic, constituting a public corporation and a governmental agency and instrumentality of the state. All powers, duties, and obligations of the Kentucky Pollution Abatement and Water Resources Finance Authority shall be transferred March 31, 1988, to the Kentucky Infrastructure Authority. The affairs of the authority shall be managed and carried out by a board consisting of nine (9) members. The secretaries of the Economic Development, Finance and Administration, and Environmental and Public Protection Cabinets; the executive director of the Public Service Commission; and the commissioner of the ***Governor's Office for Local Development***~~{Department for Local Government}~~ shall serve as ex officio members of the authority. The secretaries, the executive director, and the commissioner may designate alternates. On or before August 1, 2000, the Governor shall additionally appoint five (5) at-large members. One (1) member shall be selected from a list of three (3) nominees submitted by the Kentucky Association of Counties, one (1) member selected from a list of three (3) nominees submitted by the Kentucky League of Cities, one (1) member selected from a list of three (3) nominees submitted by the Kentucky Rural Water Association, one (1) member representing for-profit private water companies, and one (1) member selected from a list of three (3) nominees submitted by the Kentucky section of the American Water Works Association. The at-large members shall serve as follows: two (2) shall serve a term ending June 30, 2004; two (2) shall serve a term ending June 30, 2003; and one (1) shall serve a term ending June 30, 2002. As the terms of the at large members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed. The members shall constitute the Kentucky Infrastructure Authority, with power in that name to contract and be contracted with, sue and be sued, have and use a corporate seal, and exercise, in addition to the powers and functions specifically stated in this chapter, all of the usual powers of private corporations to the extent that the same are not inconsistent with specifically enumerated powers of the authority. In the carrying out of its purposes and the exercise by it of the powers conferred by this chapter, the authority is deemed and declared to be performing essential governmental functions and public purposes of the state.
- (2) The members of the authority shall receive no compensation for their services in said capacity, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as such members.
- (3) Five (5) members of the authority shall constitute a quorum for the transaction of business, and in the absence of a quorum, one (1) or more members may adjourn from time to time until a quorum is convened. The members of the authority shall choose from their ranks a chair and a vice chair. The authority shall elect a secretary and a treasurer who shall not be members of the authority, each of whom shall serve at the pleasure of the authority and shall receive compensation as may be determined by the authority.
- (4) (a) The authority shall, for administrative purposes, be attached to the ***Governor's Office for Local Development, which shall provide any office space required by the authority.***~~{Office of the Governor, and shall establish and maintain offices in premises which shall be provided for that purpose by the Finance and Administration Cabinet; and}~~
- (b) The secretary of the authority shall at all times maintain therein complete records of all of the authority's actions and proceedings which shall constitute public records open to inspection at all reasonable times.

Section 90. KRS 224A.300 is amended to read as follows:

- (1) The General Assembly finds that ***it is necessary to encourage***~~{the work of the Water Resource Development Commission, created by executive order of the Governor and confirmed by the General Assembly in KRS 147A.011, established the necessity of encouraging}~~ regionalization, consolidation, and partnerships among governmental agencies, and private parties when appropriate, with the goal of making potable water and wastewater treatment available to all Kentuckians through the maximization of financial resources and the conservation of natural resources of the Commonwealth. Based on these findings, the General Assembly

declares that the Kentucky Infrastructure Authority shall implement a program for the provision of water services as authorized in the budget and directed by the General Assembly.

- (2) ***The authority shall be responsible***~~[On July 14, 2000, responsibility]~~ for the management and operation of the Water Resource Information System~~[shall be transferred from the Water Resource Development Commission to the authority]~~. The authority shall maintain and, at least annually, update the information contained in this system to ensure its accuracy.
- (3) The authority may request all branches of state and local government, including special districts and water districts, to provide information relating to the status of existing plants, the financial condition of existing systems, and the existing regulatory authority held by agencies of government regarding the issue of water resource development and management. All branches of state and local government shall, to the extent reasonable and appropriate, comply with such requests for information.
- (4) The authority shall promulgate administrative regulations that require a water supply and distribution system receiving or seeking funding to provide current information regarding the financial, managerial, and technical aspects of its system and, thereafter, to furnish updates to the information so provided.

Section 91. KRS 276.530 is amended to read as follows:

The Railroad Commission shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the ***Governor's Office for Local Development***~~[Department for Local Government]~~ any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

Section 92. KRS 277.406 is amended to read as follows:

Each railroad proposing to discontinue service over or to obtain federal authority for regulatory abandonment of a railroad corridor in the Commonwealth of Kentucky shall, in addition to those notification requirements set out in federal law, notify the Commonwealth's Railtrail Development Office in the ***Governor's Office for Local Development***~~[Department for Local Government]~~ and the trails coordinator in the Department of Parks that the railroad is attempting to obtain federal authority to do so.

Section 93. KRS 278.457 is amended to read as follows:

The Public Service Commission shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the ***Governor's Office for Local Development***~~[Department for Local Government]~~ any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

Section 94. KRS 424.190 is amended to read as follows:

- (1) If a statute gives discretion to a public officer or agency or governmental body as to the method of making an advertisement required by the statute, and if a statute provides that an advertisement may be made either by posting or by newspaper publication, the advertisement shall be made by newspaper publication in accordance with the provisions of this chapter, except as provided in subsection (2) of this section.
- (2) Any city may, when the cost of the newspaper publication exceeds the cost of postage, supplies, and reproduction for the alternative method of publication, in lieu of newspaper publication of advertisement, substitute delivery of a copy of the advertisement by first class mail to each residence within the publication area. Any city electing to use the alternative publication methods authorized by this section shall forward three (3) copies of its audit report or one (1) copy of its financial statement, whichever is applicable, to the ***Governor's Office for Local Development***~~[Kentucky Department for Local Government]~~ in accordance with KRS 91A.040 and 424.220.

Section 95. The following KRS sections are repealed:

- 11.180 Kentucky Appalachian Commission.
- 11.182 Membership -- Reimbursement of expenses -- Designation of alternate.
- 11.184 Officers -- Duties -- Annual report.
- 64.770 County Officials' Compensation Board.

- 64.780 Questionnaires -- Reports of recommendations.
- 65.915 Date of filing first report.
- 82.025 Kentucky Urban Affairs Council.
- 147A.006 Local Government Advisory Commission established.
- 147A.009 Division of Flood Control.
- 147A.011 Water Resource Development Commission -- Duties -- Membership -- Term -- Authority to designate alternate.
- 151.560 Flood Control Advisory Commission.
- 151.570 Duties of commission.
- 154.33-020 Appalachian Development Council -- Functions -- Membership.
- 154.85-001 Short title for KRS 154.85-001 to 154.85-085.
- 154.85-010 Definitions for KRS 154.85-001 to 154.85-085.
- 154.85-015 Creation of West Kentucky Corporation -- Purpose -- Interim board of directors.
- 154.85-020 Eligibility for membership on board of directors and in corporation.
- 154.85-025 Board of directors -- Terms of office -- Vacancies.
- 154.85-027 Removal of members -- Meetings -- Officers.
- 154.85-030 Disclosure of conflict of interest -- Nonparticipation in contract authorization.
- 154.85-033 Limitation of liability of corporate members or officers.
- 154.85-035 Powers and authority of corporation.
- 154.85-040 Executive committee -- Membership -- Powers and duties -- Meetings -- Expenses.
- 154.85-045 Issuance of bonds.
- 154.85-050 West Kentucky economic development fund.
- 154.85-055 Construction of KRS 154.85-001 to 154.85-085.
- 154.85-060 Bonds payable from revenues and assets only.
- 154.85-065 Negotiability of obligations of corporation.
- 154.85-070 Status of obligations as authorized investments.
- 154.85-075 Tax-exempt status.
- 154.85-080 Disposition of corporation assets upon termination or dissolution.
- 154.85-085 Annual report -- Annual audit.

Section 96. In order to reflect the reorganization effectuated by this Act, the reviser of statutes shall replace references in the Kentucky Revised Statutes to the agencies, subagencies, and officers affected by this Act with references to the appropriate successor agencies, subagencies, and officers established by this Act. The reviser of statutes shall base these actions on the functions assigned to the new entities by this Act and may consult with officers of the affected agencies, or their designees, to receive suggestions.

Section 97. The General Assembly hereby confirms Executive Order 2006-678, dated June 19, 2006, except for the provision abolishing the East Kentucky Corporation, to the extent it is not otherwise confirmed or superseded by this Act.

Approved March 21, 2007.

CHAPTER 48

(SB 23)

AN ACT relating to assistance dogs.

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

Section 1. KRS 258.500 is amended to read as follows:

- (1) As used in subsections (1) to (11) of this section, "person" means a "person with a disability" as defined by KRS 210.770. "Person" also includes a trainer of an assistance dog.
- (2) If a person is accompanied by an assistance dog, neither the person nor the dog shall be denied admittance to any hotel, motel, restaurant, or eating establishment, nor shall the person be denied full and equal accommodations, facilities, and privileges of all public places of amusement, theater, or resort when accompanied by an assistance dog.
- (3) Any person accompanied by an assistance dog shall be entitled to full and equal accommodations on all public transportation, if the dog does not occupy a seat in any public conveyance, nor endanger the public safety.
- (4) No person shall be required to pay additional charges or fare for the transportation of any accompanying assistance dog.
- (5) No person accompanied by an assistance dog shall be denied admittance and use of any public building, nor denied the use of any elevator operated for public use.
- (6) Any person accompanied by an assistance dog may keep the dog in his immediate custody while a tenant in any apartment, or building used as a public lodging.
- ~~(7) The provisions of this section shall not apply unless the assistance dog has been trained or is being trained by a recognized training agency or school, and is properly harnessed.~~
- ~~(8) (a) Except as provided in paragraph (b) of this subsection, all persons accompanied by an assistance dog shall have in their personal possession a certificate issued by the assistance dog training agency or school establishing that their dogs have been so trained.~~
- ~~(b) All trainers accompanied by an assistance dog shall have in their personal possession identification verifying that they are trainers of assistance dogs.~~
- ~~(8)(9) The provisions of this section shall not apply unless the person complies with the legal limitations applicable to nondisabled persons and unless all requirements of KRS 258.015 and 258.135 have been complied with.~~
- ~~(9)(10) Assistance dogs are exempt from all state and local licensing fees.~~
- ~~(10)(11) Licensing authorities shall accept that the dog for which the license is sought is an assistance dog if the person requesting the license is a person with a disability or the trainer of the dog when a copy of the certificate, as required under subsection (8) of this section, is attached to the licensing form.~~
- ~~(11)(12) Emergency medical treatment shall not be denied to an assistance dog assigned to a person regardless of the person's ability to pay prior to treatment.~~
- (12) No person shall willfully or maliciously interfere with an assistance dog or the dog's user.

Section 2. KRS 258.991 is amended to read as follows:

Any person violating KRS 258.500(2), (3), (4), (5), (6), **(11)**, or (12) shall be punished by a fine of not less than two hundred and fifty dollars (\$250), nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than 10 nor more than 30 days, or both. No person shall be charged with a violation of KRS 258.500(2), (3), (4), (5), (6), **(11)**, or (12) if the requirements of KRS 258.500(7)~~(8)~~ are not met.

Approved March 21, 2007.

CHAPTER 49**(SB 104)**

AN ACT relating to mental illness.

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

Section 1. KRS 210.365 is amended to read as follows:

- (1) As used in this section:
 - (a) *"Crisis intervention team" (CIT) training means a forty (40) hour training curriculum based on the Memphis Police Department Crisis Intervention Team model of best practices for law enforcement intervention with persons who may have a mental illness, substance abuse disorder, mental retardation, developmental disability, or dual diagnosis that meets the requirement of subsections (2) to (5) of this section and is approved by the Kentucky Law Enforcement Council;*
 - (b) *"Department" means the Department for Mental Health and Mental Retardation Services;*
 - (c) *"Prisoner" has the same meaning as set out in KRS 441.005; and*
 - (d) ~~[(b)]~~ *"Qualified mental health professional" has the same meaning as set out in KRS 202A.011.*
- (2) *The department shall, in collaboration with the Justice Cabinet, the regional community mental health-mental retardation boards, and representatives of the Kentucky statewide affiliate of the National Alliance on Mental Illness, coordinate the development of CIT training designed to train law enforcement officers to effectively respond to persons who may have a mental illness, substance abuse disorder, mental retardation, developmental disability, or dual diagnosis, to reduce injuries to officers and citizens, to reduce inappropriate incarceration, to reduce liability, and to improve risk management practices for law enforcement agencies.*
- (3) *The CIT training shall include but not be limited to:*
 - (a) *An introduction to crisis intervention teams;*
 - (b) *Identification and recognition of the different types of mental illnesses, substance abuse disorders, mental retardation, developmental disabilities, and dual diagnoses;*
 - (c) *Interviewing and assessing a person who may have a mental illness, substance abuse disorder, mental retardation, a developmental disability, or dual diagnosis;*
 - (d) *Identification and common effects of psychotropic medications;*
 - (e) *Suicide prevention techniques;*
 - (f) *Community resources and options for treatment;*
 - (g) *Voluntary and involuntary processes for hospitalization of a person with a mental illness, substance abuse disorder, mental retardation, developmental disability, or dual diagnosis; and*
 - (h) *Hostage or other negotiations with a person with a mental illness, mental retardation, substance abuse disorder, developmental disability, or dual diagnosis.*
- (4) *The curriculum shall be presented by a team composed of, at a minimum:*
 - (a) *A law enforcement training instructor who has completed a forty (40) hour CIT training course and a CIT training instructor's course which has been approved by the Kentucky Law Enforcement Council, and at least forty (40) hours of direct experience working with a CIT;*
 - (b) *A representative from the local community mental health-mental retardation board serving the region where CIT training is conducted;*
 - (c) *A consumer of mental health services; and*
 - (d) *A representative of the Kentucky statewide affiliate of the National Alliance on Mental Illness.*

- (5) (a) *The department shall submit the CIT training curriculum and the names of available instructors approved by the department to conduct or assist in the delivery of CIT training to the Kentucky Law Enforcement Council no later than July 1, 2007.*
- (b) *The Kentucky Law Enforcement Council shall notify the department of approval or disapproval of the CIT training curriculum and trainers within thirty (30) days of submission of the curriculum and the names of instructors.*
- (c) *The Kentucky Law Enforcement Council may waive instructor requirements for non-law enforcement trainers whose names are submitted by the department.*

If the curriculum or trainers are not approved, the department shall have an opportunity to revise and resubmit the curriculum and to submit additional names of instructors if necessary.

- (6) *If the curriculum is approved, the Kentucky Law Enforcement Council shall:*
 - (a) *Notify the Kentucky State Police and all law enforcement agencies employing peace officers certified under KRS 15.380 to 15.404 of the availability of the CIT training; and*
 - (b) *Notify all instructors and entities approved for law enforcement training under KRS 15.330 of the availability of the CIT training.*
- (7) *Any law enforcement training entity approved by the Kentucky Law Enforcement Council may use the CIT training model and curriculum in law enforcement in-service training as specified by subsection (1) of this section that is consistent with the Memphis CIT national model for best practices.*
- (8) *No later than one (1) year after the effective date of this Act, the department shall submit to the Kentucky Law Enforcement Council a CIT training instructors' curriculum and the names of available instructors approved by the department to conduct or assist in the delivery of CIT training instructors' training. Additional instructors may be submitted on a schedule determined by the Kentucky Law Enforcement Council.*
- (9) *All CIT trained law enforcement officers shall report to his or her agency on forms provided with the CIT curriculum on encounters with persons with mental illness, substance abuse disorders, mental retardation, developmental disabilities, and dual diagnoses. The law enforcement agency shall aggregate reports received and submit nonidentifying information to the department on a monthly basis. Except for information pertaining to the number of law enforcement agencies participating in CIT training, the reports to the department shall include the information specified in subsection (10) of this section.*
- (10) *The department shall aggregate all reports from law enforcement agencies under subsection (9) of this section and submit nonidentifying statewide information to the Justice Cabinet, the Criminal Justice Council, the Cabinet for Health and Family Services, and to the Interim Joint Committee on Health and Welfare by December 1, 2008, and annually thereafter. The report shall include but not be limited to:*
 - (a) *The number of law enforcement officers trained per agency;*
 - (b) *Law enforcement responses to persons with mental illness, substance abuse disorders, mental retardation, developmental disabilities, and dual diagnoses;*
 - (c) *Incidents of harm to the law enforcement officer or to the citizen;*
 - (d) *The number of times physical force was required and the type of physical force used; and*
 - (e) *The outcome of the encounters that may include but not be limited to incarceration or hospitalization.*
- (11) *To implement the requirements of subsections (2) to (5) and (8) to (10) of this section, the department may use public or private funds as available and may develop a contract with a nonprofit entity that is a Kentucky statewide mental health advocacy organization that has a minimum of five (5) years of experience in implementation of the CIT training program in Kentucky.*
- (12) *The Cabinet for Health and Family Services shall create a telephonic behavioral health jail triage system to screen prisoners for mental health risk issues, including suicide risk. The triage system shall be designed to give the facility receiving and housing the prisoner an assessment of his or her mental health risk, with the assessment corresponding to recommended protocols for housing, supervision, and care which are designed to mitigate the mental health risks identified by the system. The triage system shall consist of:*

- (a) A screening instrument which the personnel of a facility receiving a prisoner shall utilize to assess inmates for mental health, suicide, mental retardation, and acquired brain injury risk factors; and
 - (b) A continuously available toll-free telephonic triage hotline staffed by a qualified mental health professional which the screening personnel may utilize if the screening instrument indicates an increased mental health risk for the assessed prisoner.
- ~~(13)(3)~~ In creating and maintaining the telephonic behavioral health jail triage system, the cabinet shall consult with:
- (a) The Department of Corrections;
 - (b) The Kentucky Jailers Association;
 - (c) The Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses; and
 - (d) The regional community mental health and mental retardation services programs created under KRS 210.370 to 210.460.
- ~~(14)(4)~~ The cabinet may delegate all or a portion of the operational responsibility for the triage system to the regional community mental health and mental retardation services programs created under KRS 210.370 to 210.460 if the regional program agrees and the cabinet remains responsible for the costs of delegated functions.
- ~~(15)(5)~~ The cabinet shall design into the implemented triage system the ability to screen and assess prisoners who communicate other than in English or who communicate other than through voice.
- ~~(16)(6)~~ The cost of operating the telephonic behavioral health jail triage system shall be borne by the cabinet.
- ~~(17)(7)~~ Records generated under this section shall be treated in the same manner and with the same degree of confidentiality as other medical records of the prisoner.
- ~~(18)(8)~~ Unless the prisoner is provided with an attorney during the screening and assessment, any statement made by the prisoner in the course of the screening or assessment shall not be admissible in a criminal trial of the prisoner, unless the trial is for a crime committed during the screening and assessment.
- ~~(19)(9)~~ The cabinet may, after consultation with those entities set out in subsection ~~(13)(3)~~ of this section, promulgate administrative regulations for the operation of the telephonic behavioral health jail triage system and the establishment of its recommended protocols for prisoner housing, supervision, and care.

Approved March 21, 2007.

CHAPTER 50

(HB 259)

AN ACT relating to the practice of accounting.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 325 IS CREATED TO READ AS FOLLOWS:

A person that enters this state and represents himself or herself as a "certified public accountant" or a "CPA" and performs or offers to perform a regulated activity for a person in this state without first obtaining a license under this chapter or complying with the practice privilege requirement in KRS 325.280 consents to the personal, subject matter, and disciplinary jurisdiction of the board. The board may conduct investigations, hearings, and impose sanctions against the person or firm as if the person or firm held a license under this chapter.

Section 2. KRS 325.240 is amended to read as follows:

- (1) The board shall elect annually a president ***and such other officers as it deems necessary***~~[a secretary, and a treasurer from its members. The offices of secretary and treasurer may be held by the same individual].~~
- (2) The board may promulgate, and amend from time to time, administrative regulations, in accordance with the provisions of KRS Chapter 13A, for the orderly conduct of its affairs,~~[and]~~ for the administration of this

chapter, ~~and~~. ~~The board may also promulgate, and amend from time to time, rules of professional conduct appropriate~~ to establish and maintain a high standard of integrity and dignity in the profession of public accounting.

- (3) A majority of the board shall constitute a quorum for the transaction of business.
- (4) The board shall have a seal which shall be judicially noticed. The board shall keep records of its proceedings, and in any proceeding in court, civil or criminal, arising out of or founded upon any provision of this chapter, copies of said records certified as correct under the seal of the board shall be admissible in evidence as tending to prove the content of said records.
- (5) The board may employ an executive director and such other personnel as it deems necessary in its administration and enforcement of this chapter. It may appoint such committees or persons, to advise or assist it in the administration and enforcement, as it may see fit. It may retain its own counsel to advise and assist it, in addition to such advice and assistance as is provided by the Attorney General of this state.
- (6) ***The board may join or participate in professional organizations and associations that promote improvement of the practice of accounting for the protection of the public or to facilitate the activities of the board.***
- (7) ***The board may expend funds from its account created by KRS 325.250 to assist with accounting educational programs proposed or offered in the primary and secondary schools in this state. The amount of the expenditure shall not interfere with the performance of the board's other responsibilities.***
- (8) ***The board may purchase professional liability insurance for its members, staff, and investigators. The purchase of or failure to purchase insurance shall not be deemed a waiver of any immunity already conferred on the board, its members, staff, and investigators.***

Section 3. KRS 325.250 is amended to read as follows:

All fees and other moneys received by the board pursuant to the provisions of this chapter shall be ~~paid to the treasurer of the board for the use of the board, and shall be~~ deposited in the State Treasury to the credit of a revolving fund for the use of the board ***in carrying out the provisions of this chapter.*** No part of this revolving fund shall revert to the general funds of this state. The compensation provided by this chapter and all expenses incurred under this chapter shall be paid from this revolving fund. No such compensation or expense shall be a charge against the general funds of this state. ~~The board shall file an annual report of its activities with the Governor, and such report shall include a statement of all receipts and disbursements.~~

Section 4. KRS 325.330 is amended to read as follows:

- (1) An applicant for initial issuance of a license to practice shall:
 - (a) Satisfy all the requirements of KRS 325.261 and the administrative regulations promulgated by the board;
 - (b) Pay a fee not to exceed two hundred dollars (\$200); and
 - (c) ***Complete the application process established in an administrative regulation promulgated*** ~~Submit a completed application on a form issued~~ by the board.
- (2) Licenses shall be initially issued and renewed for a period of two (2) years, and shall expire on the first day of July in the year of expiration.
- (3) When an initial license to practice is granted, the board shall issue a nonrenewable document that indicates that the licensee has satisfied all requirements to receive an initial license as a certified public accountant.
- (4) An applicant for renewal of a license to practice ~~who is~~ in good standing~~;~~ shall complete ***the renewal procedure established in administrative regulations promulgated by the board that show that*** ~~a license renewal form provided by the board showing~~ the applicant has:
 - (a) Fulfilled the requirement of continuing professional education for professional enhancement as defined by the board by administrative regulation, but not to exceed eighty (80) hours during a two (2) year calendar period ending December 31 preceding the July 1 renewal date. Certified public accountants not employed by a firm licensed by the board shall be required to achieve continuing professional education not to exceed sixty (60) hours during the two (2) year calendar period ending December 31 preceding the July 1 renewal date. The board shall provide for lesser, prorated requirements for applicants whose initial permit was issued substantially less than two (2) years prior to the renewal date;

- (b) Paid a fee not to exceed two hundred dollars (\$200) biennially;
 - (c) Listed a permanent mailing address; and
 - (d) Designated *as part of the renewal process*~~[on the license renewal application]~~ whether *the applicant*~~[he]~~ is employed by a firm licensed by the board.
- (5) Any license not renewed by the expiration date shall automatically expire and the holder of the expired license shall be prohibited from practicing public accounting or holding himself out as a certified public accountant.
- (6) The holder of a license that from the date of renewal has been expired for a period shorter than six (6) months, and who has not violated any other provision of this chapter, may renew the license by meeting all of the requirements of this section and paying a late penalty fee not to exceed one hundred dollars (\$100).
- (a) If the license has expired for a period longer than six (6) months, the applicant shall apply to the board for reinstatement. The board shall determine the eligibility for license reissuance, including a late penalty fee not to exceed two hundred dollars (\$200) and additional continuing professional education hours.
 - (b) Failure to receive a renewal notice shall not constitute an adequate reason for failing to renew the license to practice in a timely manner.
- (7) The board may reduce or waive the license to practice renewal requirements upon written request of the licensee showing illness, extreme hardship, or age and complete retirement from practice as prescribed by the board by administrative regulation.
- (8) *A licensee shall notify the board in writing of a change in his or her mailing address within twenty (20) days following the effective date of the change in address.*

Section 5. KRS 325.340 is amended to read as follows:

- (1) After notice and hearing as provided in KRS Chapter 13B, the board may revoke, suspend, impose a fine not to exceed one thousand dollars (\$1,000) *for each violation of a provision of this chapter or administrative regulations promulgated by the board under this chapter*, refuse to issue or renew any license, censure, or place on probation any *person or firm*~~[licensee]~~, all with or without terms, for any one (1) or any combination of the following causes:
- (a) Fraud or deceit in obtaining a license issued under this chapter;
 - (b) Dishonesty, fraud, or negligence while performing any regulated activity, including fiscal dishonesty or an intentional breach of fiduciary responsibility of any kind, and also including, but not limited to, the following:
 - 1. Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information; and
 - 2. Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses;
 - (c) Violation of any of the provisions of this chapter or administrative regulations promulgated by the board under this chapter or violation of any order of the board;
 - (d) Violation of a rule of professional conduct promulgated by the board;
 - (e) Conviction of any felony, or of any crime in which dishonesty or fraud is an element, under the laws of any state or of the United States. Conviction includes, but is not limited to, pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime;
 - (f) Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant or a public accountant in any state;
 - (g) Suspension or revocation of the right to practice before any state or federal agency *or the Public Company Accounting Oversight Board or its successor*;
 - (h) Conduct discreditable to the accounting profession; or
 - (i) Failure to respond to a board inquiry regarding any licensing or complaint matter.

- (2) In any proceeding in which a remedy provided by subsection (1) of this section is imposed, the board may also require the respondent~~[licensee]~~ to pay the costs of the *investigation and all proceedings*~~[proceeding]~~.

Section 6. KRS 325.360 is amended to read as follows:

- (1) The board may conduct investigations of suspected violations of this chapter or the administrative regulations promulgated by the board to determine whether there is probable cause to institute proceedings against any person or firm for any violation under this chapter, but an investigation under this section shall not be a prerequisite to proceedings. In aid of these investigations, the board or its designee may issue subpoenas to compel witnesses to testify and to produce evidence. Subpoenas may be served in person or by certified mail, return receipt requested.
- (2) The board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall report to the board. The board shall then find probable cause or lack of probable cause, or it shall request that the investigating officer investigate further. Until there has been a determination of probable cause, the findings of the investigating officer, the testimony and documents gathered in the investigation, and the fact of pendency of the investigation shall be treated as confidential information and shall not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation.
- (3) Upon a finding of probable cause,~~[if the subject of the investigation is a licensee,]~~ the board shall direct that a complaint be issued pursuant to this section *setting forth appropriate charges and a date for a hearing that shall be conducted in accordance with KRS Chapter 13B*~~[, and if the subject of the investigation is not a licensee, the board shall take appropriate action pursuant to this chapter]~~. Upon a finding of a lack of probable cause, the board shall *dismiss*~~[close]~~ the matter *either with or without prejudice*.
- (4) In any case where probable cause has been determined pursuant to this section, *the board may request the affected party to informally resolve the matter through mediation or otherwise*~~[with respect to a violation by a licensee, or where the board has received a written complaint by any person furnishing grounds for a determination of probable cause about a violation or where the board has received notice of a decision by the board of accountancy of another state furnishing grounds, the board shall issue a complaint setting forth appropriate charges and set a date for a hearing which shall be conducted in accordance with KRS Chapter 13B]~~.
- (5) A *person or firm*~~[licensee]~~, after having been served with the notice of hearing and complaint as provided for in subsection (3)~~[(4)]~~ of this section, shall file a written response within twenty (20) days from the date *of service*~~[he was served]~~. If the respondent licensee fails to file a timely response or fails to appear at the hearing, the board may hear evidence against *the respondent*~~[him]~~ and may enter a final order as shall be justified by the evidence.
- (6) In a hearing under this section, the respondent~~[licensee]~~ may appear in person or, in the case of a firm, through a partner, or shareholder or other person with an ownership interest.
- (7) The evidence supporting the complaint shall be presented by the investigating officer, by a board member designated for that purpose, or by counsel. A board member who presents the evidence, or who has conducted the investigation of the matter under this section, shall not participate in the board's decision of the matter.
- (8) In a hearing under this section before the board or in acting upon the recommended order of a hearing officer, a vote of a majority of all members of the board then in office, other than a member disqualified by reason of subsection (7) of this section, shall be required to sustain any charge and to impose any penalty with respect thereto.
- (9) Any person adversely affected by any order of the board may obtain a review thereof by filing a written petition for review with the Franklin Circuit Court in accordance with KRS Chapter 13B.
- (10) On rendering a final order~~[to revoke, suspend, refuse to renew, or censure the holder of a license to practice issued under this chapter]~~, the board shall examine its records to determine whether the respondent is authorized or licensed to practice as a certified public accountant in any other state. If the board determines that the respondent is authorized or licensed to practice in any other state, the board shall notify the board of accountancy of the other state of its action by mail within thirty (30) days of rendering the final order.

- (11) The board may exchange information relating to proceedings resulting in disciplinary action against licensees with the boards of accountancy of other states and with other public authorities or private organizations having an interest in the information.

Approved March 21, 2007.

CHAPTER 51

(SB 92)

AN ACT relating to the Kentucky Soil and Water Conservation Commission.

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

Section 1. KRS 262.010 is amended to read as follows:

- (1) "Board" means the board of supervisors of a conservation district;
- (2) "Commission" means the Conservation Commission;
- (3) "District" means a conservation district whenever used in KRS 262.010 through 262.660 or a watershed conservancy district whenever used in KRS 262.700 through 262.795;
- (4) "Due notice" means notice published in accordance with the legal notice provisions of KRS Chapter 424;
- (5) **"Infrastructure" means the plant and assets required for maintaining a district office;**
- (6) "Land occupier" or "occupier of land" includes any person other than the landowner who is in possession of any lands lying within the district, whether as lessee or otherwise;
- ~~(7)(6)~~ "Landowner" or "owner of land" includes any person who holds legal or equitable title to the land within the district determined as follows:
 - (a) By his, her, or their names appearing on the recorded deed to the land;
 - (b) By title derived through a probated will or by the laws of descent and distribution under KRS Chapter 391;
 - (c) Where a minor or person adjudged mentally disabled is the owner of land within the district, the guardian or conservator or whoever has the power of attorney shall have the right to vote for such landowner under the provisions of KRS Chapter 262;
 - (d) Where the will has not been probated by the date of the referendum or election as provided in KRS Chapter 262, the executor of the deceased landowner shall have the right to vote for the devisee or devisees;
 - (e) Where the land within the districts is held in trust, the trustee shall have the right to vote for the landowner under the provisions of KRS Chapter 262;
 - (f) A landowner shall be entitled to but one (1) vote whenever he is given the right to vote under KRS Chapter 262 regardless of the number of tracts or parcels of land which he owns either wholly or in part, within the district;
 - (g) Where a trustee, executor, guardian, conservator or other person with authority to vote for a landowner exercises such duty in relation to two (2) or more estates or tracts of land, within a district, such person shall have the right to vote separately for each such landowner which he represents within the district;
 - (h) In the case of a dispute as to whether or not a person has the right to vote in an election or referendum under the provisions of KRS Chapter 262, the person seeking such right must provide to the satisfaction of the polling superintendent that he has the right to vote under this section.
- ~~(8)(7)~~ "Supervisor" means one of the members of the governing body of a conservation district.

Section 2. KRS 262.620 is amended to read as follows:

The Division of Conservation shall retain title to each piece of heavy or specialized ~~machinery or~~ equipment **or any infrastructure** ~~so~~ purchased and made available to any soil and water conservation district until such time as the soil

and water conservation districts fully amortize the commission's investment in ~~the [such machinery or]~~ equipment **or the infrastructure**. *If the soil and water conservation district purchases infrastructure with use of funds made available by the Division of Conservation for that purpose, then the Division of Conservation shall be listed on the deed to the property jointly with the district.* After the commission's investment in ~~the [such machinery or]~~ equipment **or infrastructure** has been fully amortized, it is authorized and empowered to transfer the title thereto to the district. *If the district has purchased infrastructure with funds made available by the Division of Conservation, the district shall consult with the division prior to the dispossession of the property.*

Section 3. KRS 262.630 is amended to read as follows:

- (1) Each soil and water conservation district which receives or uses the ~~[machinery or]~~ equipment referred to in KRS 262.610 shall maintain its public records to show for each piece of ~~[machinery or]~~ equipment: (1) the hours same has worked on each job in each district; (2) the amounts collected from each job in each district; (3) the expense of repairing, moving, manning and other usual costs of operation, and (4) the amount paid by each district for the purpose of amortizing the commission's investment in ~~the [such machinery or]~~ equipment.
- (2) *Each soil and water conservation district which leases or otherwise obtains a right of use of the infrastructure with the support of the Division of Conservation pursuant to KRS 262.610 shall maintain in public records a copy of the lease or other contract which provides the district a right of use of the infrastructure; and*
 - (a) *In the case of a purchase, the amount paid by each district for the purpose of amortizing the commission's investment in the infrastructure; or*
 - (b) *In the case of lease without right of purchase or some other contractual arrangement or agreement, the payments made to the Division of Conservation for the right of use of the infrastructure.*
- (3) Each of ~~the [such]~~ soil and water conservation districts shall send a duplicate copy of ~~the [such]~~ records to the commission, who shall retain same in its files for public inspection.
- (4) In addition thereto, the commission shall at all times maintain an account showing each piece of ~~[machinery or]~~ equipment, the title to which is vested in it, **and any infrastructure, the title of which may be vested solely in the commission or jointly with the district,** and the amount paid thereon by any soil and water conservation district, and the amount remaining to be amortized.

Section 4. KRS 262.610 is amended to read as follows:

- (1) The Soil and Water Conservation Commission as referred to in KRS Chapter 146, subject to the supervision of the commissioner for natural resources, to the restrictions provided in KRS 262.610 to 262.660, and to the requirements of KRS Chapters 42 and 45A, is hereby authorized to acquire and to make available, or to assist in acquiring or making available to soil and water conservation districts, heavy or specialized ~~[machinery or]~~ equipment **or infrastructure** which an individual district cannot itself economically obtain.
- (2) When the commission acquires or makes available to any district the ~~[machinery or]~~ equipment **or infrastructure** above referred to, it shall require said district to fully amortize, in the form of rentals **or payments**, to the Division of Conservation, as referred to in KRS Chapter 146, any amount so expended by the commission for such assistance. The amount and method of amortization for each piece of heavy ~~or specialized machinery or]~~ equipment **or infrastructure** shall be determined by the commission, subject to approval of the commissioner of natural resources. **The amount and method of amortization for each piece of heavy or specialized equipment shall be determined** ~~[,]~~ on the basis of a rental to be charged by the district to the user of ~~[such machinery or]~~ equipment sufficient (a) to fully amortize to the division the capital outlay for the machinery itself over the period of its reasonably anticipated full usefulness; (b) to cover the cost of operation, maintenance and repairs; (c) to pay the usual cost of providing an operator; (d) to compensate the district for the usual costs of transportation from one job to another.
- (3) In giving effect to all of the foregoing, the commission shall estimate the amount of time such equipment would ordinarily be idle.

Section 5. KRS 262.640 is amended to read as follows:

The amount paid by any ~~[such]~~ district to the division for amortization **of a loan or for payment on a lease** ~~[purposes]~~ shall be made monthly ~~[when the machinery is in use]~~. This amount shall be credited to a revolving fund and the costs of any new ~~[machinery or]~~ equipment **or infrastructure** shall be charged to the same account. Neither the appropriation herein made nor the revolving fund shall be used for any purpose other than to make available to soil

and water conservation districts the ~~machinery and~~ equipment **or infrastructure** of the type referred to in KRS 262.610.

Section 6. KRS 262.650 is amended to read as follows:

Any two (2) or more soil and water conservation districts may combine with each other for the purpose of obtaining and using the specialized ~~machinery or~~ equipment **or infrastructure** referred to in KRS 262.610, upon the terms and conditions set forth in KRS 262.610 to 262.660.

Section 7. KRS 262.748 is amended to read as follows:

- (1) Upon determination by the board of directors of a watershed conservancy district that the improvement, continuing operation, or maintenance of a watershed project is necessary, the board of directors may adopt a resolution which shall set out: (a) a list of the benefited lands located in the flood plain, as determined by the board of directors, giving the acreage of such lands and the names of the owners thereof as defined by KRS 262.010(7)~~((6))~~ with a classification of such lands or parts thereof into classes in order that assessments may be made according to direct benefits, and (b) the annual assessments to be levied upon the lands set out in the resolution on the basis of a certain amount per acre according to benefits received, not to exceed in any one year a sum per acre specified in the resolution.
- (2) The board of directors shall cause due notice of the resolution to be given to all the owners of benefited lands, as determined by the board. Said notice shall set out the time and place of a meeting of the board of directors of the watershed conservancy district at which owners of benefited lands who may be liable for the annual assessments may be heard.
- (3) At the hearing upon the resolution, owners of benefited lands may voice their views concerning the proposal as to whether it should be undertaken, and the scope thereof, or the degree of benefit received by their lands. The board shall prepare a record summarizing the proceedings. If the board of directors determines as a result of the hearing that the proposal should be carried out as planned, it may make such changes or revisions in the resolution as it deems proper and shall give due notice of an election to be held at which benefited landowners may vote on the question of annual special assessments to defray the cost. The notice of the election shall include the text of the resolution of the board in its final form. The board of directors may give due notice as provided in KRS 262.010(4).
- (4) The board of directors shall prepare the following question to be presented to the voters: "Should the assessment for improvement, continuing operation, or maintenance proposed by resolution of the..... Watershed Conservancy District be adopted?" Voters shall be instructed to vote "yes" or "no" on the proposition. Only owners of benefited land as set out in the resolution shall be eligible to vote. The board of directors may provide for a meeting of the landowners at which the vote may be cast, in which case qualified voters may vote by absentee vote. The board shall appoint a polling superintendent and other necessary election officers, giving representation to the opponents of the question as well as to proponents.
- (5) If a majority of those voting upon the proposition favor the assessment the board shall give due notice of the vote. Any owner of property to be benefited by the project may, within forty (40) days after publication of such notice, file an action in the Circuit Court of the county in which his lands are located seeking relief by declaratory judgment or injunction. If a suit is filed, the county attorney shall represent the board of directors in upholding the validity of the proposed assessment. After the lapse of time specified herein all actions by owners of properties to be benefited shall be forever barred.
- (6) If no suit is filed and no injunction issued within the time allowed in subsection (5) of this section, the board of directors shall levy annual assessments effective only upon the benefited properties and based on the acreage thereof. The annual assessment shall be made by the board of directors at the same time and in the same manner as provided in KRS 262.765 for taxes generally and shall be collected as provided in KRS 262.770. The assessments shall constitute liens against the land benefited and shall attach to the land, taking precedence over all other liens except state, county and municipal taxes and prior improvement assessments.

Section 8. KRS 262.778 is amended to read as follows:

- (1) Upon determination by the board of directors of a watershed conservancy district that a watershed project is necessary, and upon approval of the plans for same by the board of supervisors, the board of directors shall adopt a resolution which shall set out:
 - (a) A description of the project in general terms;

- (b) A list of the benefited lands located in the flood plain, as determined by the board of directors, giving the acreage of such lands and the names of the owners thereof as defined by KRS 262.010(7)~~[(6)]~~ with a classification of such lands or parts thereof into classes in order that assessments may be made according to direct benefits;
 - (c) The total cost of the project; and
 - (d) The fact that the cost shall be met by a bond issue payable solely from annual assessments to be levied upon the lands set out in the resolution on the basis of a certain amount per acre according to benefits received, not to exceed in any one year a sum per acre specified in the resolution, with the annual assessments to extend over a period of years specified in the resolution not to exceed thirty (30) years.
- (2) The board of directors shall cause due notice of the resolution to be given to all the owners of benefited lands, as determined by the board. Said notice shall set out the time and place of a meeting of the board of directors of the watershed conservancy district at which owners of benefited lands who may be liable for the annual assessments may be heard.
 - (3) At the hearing upon the resolution, owners of benefited lands may voice their views concerning the proposed project as to whether said project should be undertaken, and the scope thereof, or the propriety of placing their lands in the project area or the degree of benefit received by their lands. The board shall prepare a record summarizing the proceedings. If the board of directors determines as a result of the hearing that the project should be carried out as planned, it may make such changes or revisions in the resolution as it deems proper and shall give due notice of an election to be held at which benefited landowners may vote on the question of annual special assessments to defray the cost of the project. The notice of the election shall include the text of the resolution of the board in its final form. The board of directors may give due notice as provided in KRS 262.010(4).
 - (4) The board of directors shall prepare to be presented to the voters the question: "Should the assessment proposed by resolution of the Watershed Conservancy District be adopted?". Voters shall be instructed to vote "yes" or "no." Only owners of benefited land as set out in the resolution shall be eligible to vote. The board of directors may provide for a meeting of the landowners at which the vote may be cast, in which case qualified voters may vote by absentee vote. The board shall appoint a polling superintendent and other necessary election officers, giving representation to the opponents of the question as well as to proponents.
 - (5) If a majority of those voting upon the proposition favor the assessment, the board shall give due notice of the vote and the fact that bonds will forthwith be issued payable from special assessments. Any owner of property to be benefited by the project may, within forty (40) days after publication of such notice, file an action in the Circuit Court of the county in which his lands are located seeking relief by declaratory judgment or injunction. If a suit is filed, the county attorney should represent the board of directors in upholding the validity of the proposed bond issue. After the lapse of time specified herein, all actions by owners of properties to be benefited shall be forever barred.
 - (6) If no suit is filed and no injunction issued within the time allowed in subsection (5) of this section, the board of directors shall by resolution authorize the issuance of bonds designated "watershed project assessment bonds," determining the principal amount thereof and establishing the denominations and maturity dates thereof and shall levy an annual assessment effective only upon the benefited properties and based on the acreage thereof. The annual rate of such assessments shall be fixed when other taxes of the district are levied and shall be sufficient in each year to provide for the payment of such bonds and interest coupons as they mature and sufficient to provide a fund equal to twenty percent (20%) of the average annual principal and interest requirements, the same to constitute a "debt service reserve" as a precaution against possible default by failure to collect annual levies. The bonds shall state on their face that they do not constitute a debt of the district but are payable solely from collection of special assessments made upon benefited lands lying in the watershed conservancy district.

Approved March 21, 2007.

CHAPTER 52**(HB 258)**

AN ACT relating to taxation.

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

Section 1. KRS 67.750 is amended to read as follows:

As used in KRS 67.750 to 67.790, unless the context requires otherwise:

- (1) "Business entity" means each separate corporation, limited liability company, business development corporation, partnership, limited partnership, 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, ~~2006~~~~[2004]~~, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, ~~2006~~~~[2005]~~, 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 2. 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, ~~2006~~~~2004~~, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, ~~2006~~~~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 the greater of:
 - (a) 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:
 - 1. Include interest income derived from obligations of sister states and political subdivisions thereof; and
 - 2. Include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
 - (b) Adjusted gross income as defined in subsection (10) of this section and adjusted to 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;
 - (s) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner; and
 - (t) Exclude all income from all sources for active duty and reserve members and officers of the Armed Forces of the United States or National Guard who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred. For the purposes of this paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries;
- (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) For taxable years beginning after December 31, 2004, and before January 1, 2007, exclude the distributive share income or loss received from a corporation defined in subsection (24)(b) of this section whose income has been subject to the tax imposed by KRS 141.040. The exclusion provided in this paragraph shall also apply to a taxable year that begins prior to January 1, 2005, if the tax imposed by KRS 141.040 is paid on the distributive share income by a corporation defined in subparagraphs 2. to

8. of subsection (24)(b) of this section with a return filed for a period of less than twelve (12) months that begins on or after January 1, 2005, and ends on or before December 31, 2005. This paragraph shall not be used to delay payment of 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; *and*
 - (h) *Any dividends-paid deduction of any captive real estate investment trust;*
- (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, *except that a captive real estate investment trust shall not be allowed any deduction for dividends paid;*
- (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)
 - (a) For taxable years beginning before January 1, 2005, and after December 31, 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code; and
 - (b) For taxable years beginning after December 31, 2004, and before January 1, 2007, "corporations" means:
 - 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
 - 2. S corporations as defined in Section 1361(a) of the Internal Revenue Code;
 - 3. A foreign limited liability company as defined in KRS 275.015(6);
 - 4. A limited liability company as defined in KRS 275.015(8);
 - 5. A professional limited liability company as defined in KRS 275.015(18);
 - 6. A foreign limited partnership as defined in KRS 362.2-102(9);
 - 7. A limited partnership as defined in KRS 362.2-102(14);
 - 8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-101(7) or(8);
 - 9. A real estate investment trust as defined in Section 856 of the Internal Revenue Code;
 - 10. A regulated investment company as defined in Section 851 of the Internal Revenue Code;
 - 11. A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;
 - 12. A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code; and
 - 13. Other similar entities created with limited liability for their partners, members, or shareholders.

For purposes of this paragraph, "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. As used in this paragraph, "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 pass-through entity 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 deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; 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) "Pass-through entity" means any partnership, S corporation, limited liability company, limited liability partnership, limited partnership, or similar entity recognized by the laws of this state that is not taxed for federal purposes at the entity level, but instead passes to each partner, member, shareholder, or owner their proportionate share of income, deductions, gains, losses, credits, and any other similar attributes;
- (27) "S corporation" means "S corporation" as defined in Section 1361(a) of the Internal Revenue Code;~~and~~
- (28) "Limited liability pass-through entity" means any pass-through entity that affords any of its partners, members, shareholders, or owners, through function of the laws of this state or laws recognized by this state, protection from general liability for actions of the entity; *and*
- (29) *"Captive real estate investment trust" means a real estate investment trust as defined in Section 856 of the Internal Revenue Code that meets the following requirements:*
 - (a)
 - 1. *The shares or other ownership interests of the real estate investment trust are not regularly traded on an established securities market; or*
 - 2. *The real estate investment trust does not have enough shareholders or owners to be required to register with the Securities and Exchange Commission; and*
 - (b)
 - 1. *The maximum amount of stock or other ownership interest that is owned or constructively owned by a corporation equals or exceeds:*
 - a. *Twenty-five percent (25%) if the corporation does not occupy property owned, constructively owned, or controlled by the real estate investment trust; or*
 - b. *Ten percent (10%) if the corporation occupies property owned, constructively owned, or controlled by the real estate investment trust;*

The total ownership interest of a corporation shall be determined by aggregating all interests owned or constructively owned by a corporation;
 - 2. *For the purposes of this paragraph:*
 - a. *"Corporation" means a corporation taxable under KRS 141.040, and includes an affiliated group as defined in KRS 141.200, that is required to file a consolidated return pursuant to the provisions of KRS 141.200; and*
 - b. *"Owned or constructively owned" means owning shares or having an ownership interest in the real estate investment trust, or owning an interest in an entity that owns shares or has an ownership interest in the real estate investment trust. Constructive ownership shall be determined by looking across multiple layers of a multi-layer pass-through structure; and*
 - (c) *The real estate investment trust is not owned by another real estate investment trust.*

Section 3. The provisions of this Act shall apply to tax years beginning on or after January 1, 2007.

Approved March 21, 2007.

CHAPTER 53

(SB 26)

AN ACT relating to dental services.

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

Section 1. KRS 313.240 is amended to read as follows:

~~{(1)—}~~ No person shall practice or offer to practice dentistry or dental surgery under the name of any company, association, or corporation, except the name of a professional service corporation established under KRS Chapter 274, ***or as provided under Section 2 of this Act.*** Any person practicing or offering to practice dentistry or dental surgery shall practice under his ***or her*** own name, ~~{or}~~ the name of the professional service corporation which includes his ***or her*** name, ***or the name of a deceased or incapacitated dentist for whom the person practicing dentistry has contracted to perform continuing operations.*** No such person shall conduct a dental office in his ***or her*** name nor advertise his ***or her*** name in connection with any dental office unless he ***or she*** personally performs services as a dentist or dental surgeon in such office or personally supervises such services as are performed in such office during a portion of the time such office is operated by him ***or her*** only, and shall not use his ***or her*** name in connection with that of any other dentist, ***except as provided for deceased or incapacitated dentists in Section 2 of this Act.***

~~{(2)—}~~ No person shall be an incorporator, director, officer, or shareholder in more than three (3) professional service corporations rendering dental or dental surgery services. No dentist or dental surgeon or group of dentists or dental surgeons shall practice in more than three (3) locations.

SECTION 2. A NEW SECTION OF KRS CHAPTER 313 IS CREATED TO READ AS FOLLOWS:

- (1) ***The executor or administrator of a deceased dentist's estate, or the legal guardian or authorized representative of a dentist who has become incapacitated, may contract with another dentist or dentists to continue the operations of the deceased or incapacitated dentist's practice if the practice of the deceased or incapacitated dentist is a:***
 - (a) ***Sole proprietorship;***
 - (b) ***Corporation in which the deceased or incapacitated dentist is the sole shareholder; or***
 - (c) ***Limited liability company in which the deceased or incapacitated dentist is the sole member.***
- (2) ***Contracts to continue the operations of a deceased or incapacitated dentist's practice may extend until the practice is sold.***
- (3) ***Prior to contracting with another dentist or dentists to continue operations of a deceased or incapacitated dentist's practice the executor, administrator, guardian, or authorized representative shall file a notification of intent to contract for continuation of practice with the Board of Dentistry on a form prescribed by the board. The notification shall include the following information:***
 - (a) ***The name and license number of the deceased or incapacitated dentist;***
 - (b) ***The name and address of the dental practice;***
 - (c) ***The name, address, and tax identification number of the estate;***
 - (d) ***The name and license number of each dentist who will provide services in the dental practice;***
 - (e) ***An affirmation, under penalty of perjury, that the information provided is true and correct and that the executor, administrator, guardian, or authorized representative understands that any interference by the executor, administrator, guardian, or authorized agent or any agent or assignee of the executor, administrator, guardian, or authorized representative with the contracting dentist's or dentists' practice of dentistry or professional judgment or any other violation of this chapter is grounds for an immediate termination of the operations of the dental practice; and***
 - (f) ***Any other information the board deems necessary for the administration of this chapter.***

- (4) *Within thirty (30) days after the death or incapacitation of a dentist, the executor, administrator, guardian, or authorized representative shall send notification of the death or incapacitation by mail to the last known address of each patient of record that has received treatment by the deceased or incapacitated dentist within the previous twelve (12) months, with an explanation of how copies of the practitioner's records may be obtained. This notice may also contain any other relevant information concerning the continuation of dental practice.*
- (5) *The provisions of this section and Section 1 of this Act shall not be interpreted to relieve any person providing dental services from the requirements of KRS 313.020 or 313.190.*

Approved March 21, 2007.

CHAPTER 54

(SB 153)

AN ACT relating to the certification of court security officers.

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

SECTION 1. A NEW SECTION OF KRS 15.380 TO 15.404 IS CREATED TO READ AS FOLLOWS:

- (1) *A person certified as a court security officer after the effective date of this Act, under KRS 15.380 to 15.404 shall, at the time of becoming certified, meet the following minimum qualifications:*
 - (a) *Be a citizen of the United States;*
 - (b) *Be at least twenty-one (21) years of age;*
 - (c) *Be a high school graduate or have successfully completed a General Educational Development (GED) examination;*
 - (d) *Possess a valid license to operate a motor vehicle;*
 - (e) *Be fingerprinted for a criminal background check;*
 - (f) *Not have been convicted of any felony;*
 - (g) *Not be prohibited by federal or state law from possessing a firearm;*
 - (h) *Have received and read the Kentucky Law Enforcement Officers Code of Ethics, as established by the council;*
 - (i) *Have not received a dishonorable discharge, a bad conduct discharge, or general discharge under other than honorable conditions if he or she served in any branch of the Armed Forces of the United States;*
 - (j) *Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council, which shall accept them as complying with KRS 15.380 to 15.404;*
 - (k) *Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a court security officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.380 to 15.404;*
 - (l) *Have been interviewed by the employing agency;*
 - (m) *Have taken a psychological suitability screening administered or approved by the council by administrative regulation to determine the person's suitability to perform court security officer duties; and*
 - (n) *Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his or her suitability to perform court security officer duties. Any agency that*

administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a court security officer to the council, which shall accept them as complying with KRS 15.380 to 15.404.

- (2) *A court security officer employed on or before the effective date of this Act shall comply with the requirements of subsection (1) of this section within six (6) months of the effective date of this Act.*
- (3) *A peace officer who has previously attended law enforcement basic training and met the certification requirements of KRS 15.382 and Section 7 of this Act shall not be required to meet the requirements of this section to be appointed a court security officer, but shall meet the requirements of KRS 15.386(3).*

SECTION 2. A NEW SECTION OF KRS 15.380 TO 15.404 IS CREATED TO READ AS FOLLOWS:

The certification of a court security officer may, after a hearing held in conformity with KRS Chapter 13B, be revoked by the council for one (1) or more of the following reasons:

- (1) *Failure to meet or maintain training requirements;*
- (2) *Willful falsification of information to obtain or maintain certified status;*
- (3) *Certification was the result of an administrative error;*
- (4) *Plea of guilty to, conviction of, or entering of an Alford plea to any felony;*
- (5) *Prohibition by federal or state law from possessing a firearm; or*
- (6) *Receipt of a dishonorable discharge, a bad conduct discharge, or general discharge under other than honorable conditions from any branch of the Armed Forces of the United States.*

SECTION 3. A NEW SECTION OF KRS 15.380 TO 15.404 IS CREATED TO READ AS FOLLOWS:

- (1) *A court security officer employed or appointed after the effective date of this Act shall satisfy the basic training requirements for employment if he or she successfully completes law enforcement training developed and approved by the Kentucky Law Enforcement Council and the Administrative Office of the Courts of at least eighty (80) hours.*
- (2) *A court security officer employed or appointed after the effective date of this Act shall successfully complete forty (40) hours of biennial in-service training that has been certified or recognized by the Kentucky Law Enforcement Council, and that is appropriate to the officer's responsibilities.*
- (3) *In the event of extenuating circumstances beyond the control of a certified court security officer that prevent the officer from completing the basic or in-service training within the time specified in subsections (1) and (2) of this section, the commissioner of the department or his or her designee may grant the officer an extension of time, not to exceed one hundred eighty (180) days in which to complete the training.*
- (4) *Any court security officer who fails to successfully complete basic training within the specified time periods, including extensions, shall lose his or her court security powers and his or her precertification status shall lapse. Any court security officer who fails to successfully complete in-service training within the specified time periods, including extensions, shall lose his or her court security powers and his or her certification status shall be changed to training deficiency status. When a court security officer is deficient in required training, the commissioner of the department or his or her designee shall notify the council, which shall notify the court security officer and his or her agency.*
- (5) *A certified court security officer who has lost his or her court security powers due solely to his or her failure to meet the in-service training requirements of this section may regain his or her certification status and court security powers upon successful completion of the training deficiency.*

SECTION 4. A NEW SECTION OF KRS 15.380 TO 15.404 IS CREATED TO READ AS FOLLOWS:

The following certification categories shall exist for certified court security officers:

- (1) *"Precertification status" means that the certified court security officer is currently employed or appointed by an agency and meets or exceeds all those minimum qualifications set forth in Section 1 of this Act, but has not successfully completed the training course provided in subsection (1) of Section 3 of this Act. Upon the council's verification that the minimum qualifications have been met, the officer shall have court security officer powers as authorized under the statute under which he or she was appointed or employed. If*

an officer fails to successfully complete the training course provided in subsection (1) of Section 3 of this Act within one (1) year of employment, his or her court security powers shall automatically terminate.

- (2) *"Certification status" means that unless the certification is in revoked status or inactive status, the certified court security officer is currently employed or appointed by an agency and has met all training requirements. The officer shall have court security officer powers as authorized under the statute under which he or she was appointed or employed.*
- (3)
 - (a) *"Inactive status" means that unless the certification is in revoked status:*
 - 1. *The person has been separated on or after December 1, 1998, from the agency by which he or she was employed or appointed and has no peace officer or court security officer powers; or*
 - 2. *The person is on military active duty for a period exceeding three hundred sixty-five (365) days.*
 - (b) *The person may remain on inactive status. A person who is on inactive status and who returns to a court security officer position shall have certification status restored if he or she has successfully completed the training course under subsection (1) of Section 3 of this Act, has not committed an act for which his or her certified status may be revoked pursuant to Section 2 of this Act, and successfully completes an in-service training course as prescribed in an administrative regulation promulgated by the Kentucky Law Enforcement Council.*
 - (c) *A person returning from inactive to active certification as a court security officer after the effective date of this Act, under KRS 15.380 to 15.404, shall meet the following minimum qualifications:*
 - 1. *Be a citizen of the United States;*
 - 2. *Possess a valid license to operate a motor vehicle;*
 - 3. *Be fingerprinted for a criminal background check;*
 - 4. *Not have been convicted of any felony;*
 - 5. *Not be prohibited by federal or state law from possessing a firearm;*
 - 6. *Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;*
 - 7. *Have not received a dishonorable discharge, bad conduct discharge, or general discharge under other than honorable conditions if having served in any branch of the Armed Forces of the United States;*
 - 8. *Have been interviewed by the employing agency; and*
 - 9. *Not have had certification as a peace officer permanently revoked in another state.*
- (4) *"Training deficiency status" means that unless the certification is in revoked status or inactive status, the certified court security officer is currently employed or appointed by an agency and has failed to meet all in-service training requirements. The officer's court security powers shall automatically terminate, and he or she shall not exercise court security officer powers in the Commonwealth until he or she has corrected the in-service training deficiency.*
- (5) *"Revoked status" means that the court security officer has no court security powers and his or her certification has been revoked by the Kentucky Law Enforcement Council for any one (1) of the following reasons:*
 - (a) *Failure to meet or maintain training requirements;*
 - (b) *Willful falsification of information to obtain or maintain certified status;*
 - (c) *Certification was the result of an administrative error;*
 - (d) *Plea of guilty to, conviction of, or entering of an Alford plea to any felony;*
 - (e) *Prohibition by federal or state law from possessing a firearm; or*
 - (f) *Receipt of a dishonorable discharge, a bad conduct discharge, or general discharge under other than honorable conditions from any branch of the Armed Forces of the United States.*

- (6) *"Denied status" means that a person does not meet the requirements to achieve precertification status or certification status as a court security officer.*

The design of a certificate may be changed periodically. When a new certificate is produced, it shall be distributed free of charge to each currently certified court security officer.

SECTION 5. A NEW SECTION OF KRS 15.380 TO 15.404 IS CREATED TO READ AS FOLLOWS:

Except for persons currently employed in a hazardous duty position and who remain in that hazardous duty position while performing certified court security officer functions, the position of certified court security officer shall not be considered as a hazardous duty position within the meaning of KRS 61.592 and shall not be eligible to participate in the Kentucky Law Enforcement Foundation Program Fund unless the officer meets the requirements of KRS 15.382, 15.404, and 15.440.

Section 6. KRS 15.310 is amended to read as follows:

As used in KRS 15.315 to 15.510, 15.990, and 15.992, unless the context otherwise requires:

- (1) "Basic training course" means the peace officer *or court security officer* basic training course provided by the Department of Criminal Justice Training or a course approved and recognized by the Kentucky Law Enforcement Council;
- (2) *"Certified court security officer" means a court security officer who is certified under KRS 15.380 to 15.404;*
- (3) "Certified peace officer" means a peace officer who is certified under KRS 15.380 to ~~15.404~~~~[15.402]~~;
- ~~(4)~~~~(3)~~ "Certification" means the act by the council of issuing certification to a peace officer *or court security officer* who successfully completes the training requirements pursuant to KRS 15.404 and the requirements set forth within this chapter;
- ~~(5)~~~~(4)~~ "Council" means the Kentucky Law Enforcement Council established by KRS 15.315 to 15.510, 15.990, and 15.992;
- (6) *"Court security officer" means a person required to be certified under subsection (1)(c) of Section 7 of this Act and who is charged with the duties set out in Section 10 of this Act;*
- ~~(7)~~~~(5)~~ "Department" means the Department of Criminal Justice Training of the Justice Cabinet;
- ~~(8)~~~~(6)~~ "Law enforcement officer" means a member of a lawfully organized police unit or police force of county, city or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as sheriffs, sworn deputy sheriffs, campus security officers, law enforcement support personnel, public airport authority security officers, other public and federal peace officers responsible for law enforcement, and special local peace officers licensed pursuant to KRS 61.360;
- ~~(9)~~~~(7)~~ "Peace officer" means a person defined in KRS 446.010;
- ~~(10)~~~~(8)~~ "Secretary" means the secretary of the Justice Cabinet; and
- ~~(11)~~~~(9)~~ "Validated job task analysis" means the minimum entry level qualifications and training requirements for peace officers in the Commonwealth based upon an actual survey and study of police officer duties and responsibilities conducted by an entity recognized by the Kentucky Law Enforcement Council as being competent to conduct such a study.

Section 7. KRS 15.380 is amended to read as follows:

- (1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:
 - (a) State Police officers, but for the commissioner of the State Police;
 - (b) City, county, and urban-county police officers;
 - (c) *Court security officers and* deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);
 - (d) State or public university safety and security officers appointed pursuant to KRS 164.950;

- (e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;
 - (f) Airport safety and security officers appointed under KRS 183.880;
 - (g) Office of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090;
 - (h) Division of Insurance Fraud Investigation investigators appointed under KRS 304.47-040;~~and~~
 - (i) County detectives appointed in a county containing a consolidated local government with the power of arrest in the county and the right to execute process statewide in accordance with KRS 69.360; **and**
 - (j) ***Commonwealth detectives employed under KRS 69.110.***
- (2) The requirements of KRS 15.380 to 15.404 for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Personnel Cabinet for job specifications.
 - (3) Additional training in excess of the standards set forth in KRS 15.380 to 15.404 for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.
 - (4) The following officers may, upon request of the employing agency, be certified by the council:
 - (a) Deputy coroners;
 - (b) Deputy constables;
 - (c) Deputy jailers;
 - (d) Deputy sheriffs under KRS 70.045 and 70.263(3);
 - (e) Officers appointed under KRS 61.360;
 - (f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education;
 - (g) Private security officers;
 - (h) Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080; and
 - (i) Investigators employed by the Office of Charitable Gaming in accordance with KRS 238.510.
 - (5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:
 - (a) Sheriffs;
 - (b) Coroners;
 - (c) Constables;
 - (d) Jailers;
 - (e) Kentucky Horse Racing Authority security officers employed under KRS 230.240; and
 - (f) Commissioner of the State Police.
 - (6) Federal peace officers cannot be certified under KRS 15.380 to 15.404.

Section 8. KRS 15.388 is amended to read as follows:

- (1) Within five (5) working days of employment or appointment, the chief executive officer of the employing agency, or his designee, shall file a report with the council certifying that the newly employed officer is certified or meets or exceeds the precertification qualifications of KRS 15.382 ***for peace officers, or Section 1 of this Act for court security officers.***
- (2) If the person is certified, the council shall continue certified status.

- (3) If the person is on inactive status, the council shall upgrade to certified status unless the certification is revoked or denied as provided by KRS 15.380 to 15.404.
- (4) If the person is not certified and not on inactive status, but has successfully completed *an applicable*~~fa~~ basic training course approved and recognized by the council, the council shall designate the person as being in certified status unless the certification is revoked or denied as provided by KRS 15.380 to 15.404.
- (5) If the person is not certified and not on inactive status, and has not successfully completed *an applicable*~~fa~~ basic training course approved and recognized by the council, the council shall designate the person as being in precertification status.
- (6) A person who is in precertification status shall, upon successful completion of the required basic training, be certified unless he has committed an act that would result in revocation of his certificate in which case he shall be denied certification.
- (7) A person who is denied certified status under this section shall have the same right of appeal as a person who has been revoked under KRS 15.380 to 15.404.
- (8) If the certified *peace* officer has successfully completed the basic training required by KRS 15.404 and transfers from a peace officer *or court security officer* position from a current employer to a peace officer position for another employer, and both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.
- (9) *If the certified court security officer has successfully completed the basic training required by Section 3 of this Act and transfers from a court security officer position from a current employer to a court security officer position for another employer, and both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.*
- (10) *A certified court security officer who has met the requirements of Section 1 of this Act shall not transfer from a court security officer position to a peace officer position unless the certified court security officer meets all the requirements of a certified peace officer under KRS 15.382 and 15.404(1). If the certified court security officer has met the minimum qualifications of KRS 15.382, successfully completed the basic training required for certified peace officers under KRS 15.404(1), and transfers from a court security officer position from a current employer to a peace officer position for another employer, and both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.*

Section 9. KRS 23A.090 is amended to read as follows:

- (1) The sheriff of the county in which the Circuit Court is sitting shall provide such deputies, *certified court security officers*, and ordinary equipment as the Chief Circuit Judge shall deem necessary to provide security services to the court and its facilities.
- (2) The sheriff shall be compensated for these duties at rates to be determined by law.

SECTION 10. A NEW SECTION OF KRS CHAPTER 70 IS CREATED TO READ AS FOLLOWS:

- (1) *A certified court security officer shall be charged with the following duties:*
 - (a) *Attending sessions of any court of the Court of Justice in the county in which he or she is sworn;*
 - (b) *Keeping order in the courts;*
 - (c) *Providing security services to the courts within the court facility or immediate area of the court facility;*
 - (d) *Guarding prisoners during court appearances;*
 - (e) *Serving warrants and other court papers on individuals physically present in the courtroom;*
 - (f) *Transporting prisoners;*
 - (g) *Arresting and taking individuals into custody who are in the court facility or immediate area of the court facility, or while transporting prisoners; and*

- (h) *Service of process and other papers relating to civil matters on individuals physically present in the courtroom.*
- (2) *A certified court security officer shall not:*
 - (a) *Go outside the immediate area of the court facility in which he or she is providing security services to make an arrest or take an individual into custody, except when transporting prisoners;*
 - (b) *Patrol the roads, streets, or highways;*
 - (c) *Issue traffic citations, except to enforce parking regulations around the court facility; or*
 - (d) *Perform general law enforcement duties outside that of providing court security.*

Section 11. KRS 70.030 is amended to read as follows:

- (1) The sheriff may appoint his or her own deputies and may revoke the appointment at his or her pleasure except where that revocation is prohibited by the provisions of KRS 70.260 to 70.273. In a county containing a consolidated local government or city of the first class with a deputy sheriff merit board, the term of office of a deputy shall continue from sheriff to sheriff unless a deputy is removed according to the provisions of KRS 70.260 to 70.273. Before any deputy executes the duties of his or her office, he or she shall take the oath required to be taken by the sheriff.
- (2) *The sheriff may appoint his or her own certified court security officers and may revoke the appointment at his or her pleasure. A certified court security officer shall take an oath to faithfully perform the duties of his or her office and that he or she possesses the minimum qualifications under Section 1 of this Act.*
- (3) The sheriff may appoint nonsworn clerical, technical, professional, and support personnel to assist him or her in the performance of the duties of his or her office. All nonsworn personnel shall serve at the pleasure of the sheriff.
- ~~(4)(3)~~ No sheriff whose county has adopted a deputy sheriff merit board under KRS 70.260 shall appoint a deputy who is a member of the immediate family of the sheriff. The term "member of the immediate family" has the meaning given in KRS 70.260.
- ~~(5)(4)~~ *Except for certified court security officers*, a sheriff's office may, upon the written request of the sheriff, participate in the Kentucky Law Enforcement Foundation Program Fund authorized by KRS 15.410 to 15.510 without the county establishing a deputy sheriff merit board. This subsection shall not prohibit the sheriff from requesting the consolidated local government or the fiscal court to establish a deputy sheriff merit board.

Section 12. KRS 70.036 is amended to read as follows:

- (1) Sheriffs, ~~and~~ bonded deputy sheriffs, *and certified court security officers* are authorized to wear approved uniforms while engaged in the performance of their duties. As used herein, "approved uniforms" means those uniforms the design and color of which are officially approved by the Kentucky Sheriffs' Association.
- (2) The expense of uniforms used by sheriffs, ~~and~~ their deputies, *and certified court security officers* in accordance with this section may be paid by the fiscal court from the county general fund. All such uniforms shall be the property of the county.

Section 13. KRS 70.140 is amended to read as follows:

The sheriff shall, by himself or deputy, attend and keep order in the fiscal court and any court of the Court of Justice and shall obey the orders of said courts, *but a certified court security officer may only attend and keep order in any court of the Court of Justice and shall obey the orders of said court.*

Section 14. KRS 527.020 is amended to read as follows:

- (1) A person is guilty of carrying a concealed weapon when he carries concealed a firearm or other deadly weapon on or about his person.
- (2) Peace officers *and certified court security officers*, when necessary for their protection in the discharge of their official duties; United States mail carriers when actually engaged in their duties; and agents and messengers of express companies, when necessary for their protection in the discharge of their official duties, may carry concealed weapons on or about their person.

- (3) Policemen directly employed by state, county, city, or urban-county governments may carry concealed deadly weapons on or about their person at all times within the Commonwealth of Kentucky, when expressly authorized to do so by the government employing the officer.
- (4) Persons, except those specified in subsection (5) of this section, licensed to carry a concealed deadly weapon pursuant to KRS 237.110 may carry a firearm or other concealed deadly weapon on or about their persons at all times within the Commonwealth of Kentucky, if the firearm or concealed deadly weapon is carried in conformity with the requirements of that section. Unless otherwise specifically provided by the Kentucky Revised Statutes or applicable federal law, no criminal penalty shall attach to carrying a concealed firearm or other deadly weapon with a permit at any location at which an unconcealed firearm or other deadly weapon may be constitutionally carried. No person or organization, public or private, shall prohibit a person licensed to carry a concealed deadly weapon from possessing a firearm, ammunition, or both, or other deadly weapon in his or her vehicle in compliance with the provisions of KRS 237.110 and 237.115. Any attempt by a person or organization, public or private, to violate the provisions of this subsection may be the subject of an action for appropriate relief or for damages in a Circuit Court or District Court of competent jurisdiction.
- (5)
 - (a) The following persons, if they hold a license to carry a concealed deadly weapon pursuant to KRS 237.110, may carry a firearm or other concealed deadly weapon on or about their persons at all times and at all locations within the Commonwealth of Kentucky, without any limitation other than as provided in this subsection:
 - 1. A Commonwealth's attorney or assistant Commonwealth's attorney;
 - 2. A county attorney or assistant county attorney;
 - 3. A justice or judge of the Court of Justice; and
 - 4. A retired or senior status justice or judge of the Court of Justice.
 - (b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.
 - (c) A person specified in this section who is issued a concealed deadly weapon license shall be issued a license which bears on its face the statement that it is valid at all locations within the Commonwealth of Kentucky and may have such other identifying characteristics as determined by the Department of State Police.
- (6)
 - (a) Except provided in this subsection, the following persons may carry concealed deadly weapons on or about their person at all times and at all locations within the Commonwealth of Kentucky:
 - 1. An elected sheriff and full-time and part-time deputy sheriffs certified pursuant to KRS 15.380 to 15.404 when expressly authorized to do so by the unit of government employing the officer;
 - 2. An elected jailer and a deputy jailer who has successfully completed Department of Corrections basic training and maintains his or her current in-service training when expressly authorized to do so by the jailer; and
 - 3. The department head or any employee of a corrections department in any jurisdiction where the office of elected jailer has been merged with the office of sheriff who has successfully completed Department of Corrections basic training and maintains his or her current in-service training when expressly authorized to do so by the unit of government by which he or she is employed.
 - (b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.

- (7) (a) A full-time paid peace officer of a government agency from another state or territory of the United States or an elected sheriff from another territory of the United States may carry a concealed deadly weapon in Kentucky, on or off duty, if the other state or territory accords a Kentucky full-time paid peace officer and a Kentucky elected sheriff the same rights by law. If the other state or territory limits a Kentucky full-time paid peace officer or elected sheriff to carrying a concealed deadly weapon while on duty, then that same restriction shall apply to a full-time paid peace officer or elected sheriff from that state or territory.
- (b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.
- (8) A firearm or other deadly weapon shall not be deemed concealed on or about the person if it is located in a glove compartment, regularly installed in a motor vehicle by its manufacturer, regardless of whether said compartment is locked, unlocked, or does not have a locking mechanism. No person or organization, public or private, shall prohibit a person from keeping a firearm or ammunition, or both, or other deadly weapon in a glove compartment of a vehicle in accordance with the provisions of this subsection. Any attempt by a person or organization, public or private, to violate the provisions of this subsection may be the subject of an action for appropriate relief or for damages in a Circuit Court or District Court of competent jurisdiction.
- (9) Carrying a concealed weapon is a Class A misdemeanor, unless the defendant has been previously convicted of a felony in which a deadly weapon was possessed, used, or displayed, in which case it is a Class D felony.

SECTION 15. A NEW SECTION OF KRS 15.410 TO 15.510 IS CREATED TO READ AS FOLLOWS:

- (1) *A court security officer certified pursuant to KRS 15.380 to 15.404 shall not be a deputy sheriff.*
- (2) *A court security officer certified pursuant to KRS 15.380 to 15.404 shall not be eligible for inclusion in the Kentucky Law Enforcement Foundation Program fund.*
- (3) *The appointment of a court security officer, whether certified or not, by a sheriff shall not affect the ability of the sheriff or certified deputy sheriffs to participate in the Kentucky Law Enforcement Foundation Program fund if all other requirements for participation in the fund under KRS 15.410 to 15.510 have been met. A sheriff or deputy sheriff who is otherwise eligible under KRS 15.410 to 15.510 for participation in the Kentucky Law Enforcement Foundation Program fund shall not be deemed ineligible because of the appointment of a court security officer by the sheriff or by any other body.*

SECTION 16. A NEW SECTION OF KRS CHAPTER 70 IS CREATED TO READ AS FOLLOWS:

- (1) *No agency of a unit of local government, other than the sheriff, shall provide security services for the Court of Justice, a courthouse, or a courtroom unless the provision of the service is specifically authorized by the Kentucky Revised Statutes.*
- (2) *No agency of state government, other than the Kentucky State Police or the Administrative Office of the Courts, shall provide security services for the Court of Justice, a courthouse, or a courtroom unless the provision of the services is specifically authorized by the Kentucky Revised Statutes.*
- (3) *This section shall not preclude any peace officer, upon request of a court security officer or justice or judge of the Court of Justice, from providing security or law enforcement service for a specific incident or series of specific incidents.*
- (4) *This section shall not preclude any peace officer from taking law enforcement action in a courthouse or courtroom upon viewing the commission of an offense, or upon service of a warrant or civil or criminal process.*

SECTION 17. A NEW SECTION OF KRS CHAPTER 70 IS CREATED TO READ AS FOLLOWS:

- (1) *In any county if the sheriff fails or refuses to provide certified peace officers or certified security officers for the provision of security services to any court of the Court of Justice then the Administrative Office of the Courts shall contract with a county, urban-county, charter county, consolidated local government,*

combined local government agency, or an agency of a city government to provide security services to any court of the Court of Justice in the county where the sheriff has failed or refused to provide such services.

- (2) *Security personnel provided by a local government under contract to the Administrative Office of the Courts shall be certified peace officers, certified court security officers, or a combination thereof.*
- (3) *A court security officer provided by a unit of local government shall:*
 - (a) *Meet all of the qualifications and training specified in KRS 15.380 to 15.404; and*
 - (b) *Have the same power, duties, restrictions, and authority as a certified court security officer pursuant to KRS Chapter 70, and Sections 14 and 15 of this Act.*

Approved March 21, 2007.

CHAPTER 55

(SB 186)

AN ACT relating to military affairs.

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

Section 1. KRS 198A.040 is amended to read as follows:

The corporation shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter including, but without limiting the generality of the foregoing, the power:

- (1) To make or participate in the making of insured construction loans to sponsors of land development or residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that construction loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (2) To make or participate in the making of insured mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that mortgage loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (3) To purchase or participate in the purchase of insured mortgage loans made to sponsors of residential housing or to persons of lower and moderate income for residential housing; provided, however, that any such purchase shall be made only upon the determination by the corporation that mortgage loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (4) To make temporary loans from the housing development fund;
- (5) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness;
- (6) To acquire real property, or any interest therein, by purchase, foreclosure, lease, sublease, or otherwise; to own, manage, operate, hold, clear, improve, and rehabilitate such real property; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purpose of the Kentucky Housing Corporation;
- (7) To sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction, land development, mortgage, or temporary loan of any type permitted by this chapter;
- (8) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;
- (9) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract, or agreement of any kind to which the corporation is a party;

- (10) To acquire, establish, operate, lease, and sublease residential housing for persons and families of lower and moderate income and to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing and where no local housing authorities or other organizations exist to fill such need;
- (11) To include in any borrowing such amounts as may be deemed necessary by the corporation to pay financing charges, interest on the obligations for a period not exceeding two (2) years from their date, consultant, advisory, and legal fees and such other expenses as are necessary or incident to such borrowing;
- (12) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes;
- (13) To provide technical and advisory services to sponsors of residential housing and to residents and potential residents thereof, including but not limited to, housing selection and purchase procedures, family budgeting, property use and maintenance, household management, and utilization of community resources;
- (14) To promote research and development in scientific methods of constructing low cost residential housing of high durability;
- (15) To encourage community organizations to participate in residential housing development;
- (16) To make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, or other organization or entity, necessary to accomplish the purposes of this chapter;
- (17) To accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source whatsoever and to agree to, and to comply with, conditions attached thereto;
- (18) To sue and be sued in its own name, plead and be impleaded;
- (19) To maintain an office in the city of Frankfort and at such other place or places as it may determine;
- (20) To adopt an official seal and alter the same at pleasure;
- (21) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;
- (22) To employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the corporation and to fix and pay their compensation from funds available to the corporation therefor, provided that any personal service contracts entered into shall be subject to review by the Government Contract Review Committee of the Legislative Research Commission;
- (23) To invest any funds held in reserve or in sinking fund accounts or any moneys not required for immediate disbursement in obligations guaranteed by the Commonwealth, the United States, or their agencies or instrumentalities; provided, however, that the return on such investments shall not violate any rulings of the Internal Revenue Service regarding the investment of the proceeds of any federally tax exempt bond issue;
- (24) To make or participate in the making of rehabilitation loans to the sponsors or owners of residential housing; provided, however, that any such rehabilitation loan shall be made only upon the determination by the corporation that the rehabilitation loan was not otherwise available wholly or in part from private lenders upon reasonably equivalent terms and conditions;
- (25) To insure or reinsure construction, mortgage, and rehabilitation loans on residential housing; provided, however, that any such insurance, reinsurance, or waiver shall be made only upon the determination by the corporation:
 - (a) That such insurance or reinsurance is not otherwise available wholly or in part from private insurers upon reasonably equivalent terms and conditions; and
 - (b) That such loan is a reasonably sound business investment; and provided further that insurance may be waived only where the corporation finds that the amount of the loan does not exceed eighty-five percent (85%) of the development costs, or eighty-five percent (85%) of the value of the property secured by the

mortgage as determined by at least two (2) appraisers who are independent of the sponsors, builders, and developers;

- (26) To make grants from appropriated funds, agency and trust funds, and any other funds from any source available to the corporation, to sponsors, municipalities, local housing authorities, and to owners of residential housing for the development, construction, rehabilitation, or maintenance of residential housing and such facilities related thereto as corporation shall deem important for a proper living environment, all on such terms and conditions as may be deemed appropriate by the corporation;
- (27) To make periodic grants to reduce principal and interest payments on mortgages or rentals payable by persons and families of lower and moderate income; and
- (28) (a) To make a grant to reduce principal and interest payments on a mortgage or a rental payable by a **regular member of the United States Armed Forces, who names Kentucky as home of record for military purposes, during that member's deployment on active duty outside the United States, or payable by a member of** a state National Guard or a Reserve component, who names Kentucky as home of record for military purposes, during that member's federal active duty. To qualify for a grant, a member~~[of a state National Guard or a Reserve component]~~ shall meet reasonable standards established by the corporation, including having family income equal to or less than two hundred percent (200%) of the state or area median income; and
- (b) To provide a member **identified in paragraph (a) of this subsection**~~[of a state National Guard or a Reserve component, who names Kentucky as home of record for military purposes,]~~ and that member's Kentucky resident spouse with the educational, technical, and ombudsman services that are necessary to maintain a mortgage during that member's federal active duty.

The Kentucky Housing Corporation shall be exempt from the regulations of the Office of Insurance and the laws of the Commonwealth relating thereto.

Section 2. KRS 36.480 is amended to read as follows:

- (1) The Kentucky Department of Military Affairs shall ***publish, and periodically update, information on its Web site to assist military spouses in obtaining professional and occupational licenses, certificates, registrations, permits, and other credentials. At a minimum, the department's Web site shall provide links to relevant Department of Defense and Kentucky state agency Web sites***~~[establish procedures to assist the spouses of military personnel acquiring and obtaining professional and occupational licenses, certificates, registrations, permits, or other credentials. A person shall be eligible for assistance under this section if he or she is the spouse of a member of the United States Armed Forces, including a member of a state's National Guard or Reserve on federal active duty who moves into Kentucky when the member of the United States Armed Forces is reassigned by the military. The department shall:~~
 - ~~(a) Establish a process by which the department shall verify whether or not the military spouse has relocated because of the reassignment of his or her spouse by the military;~~
 - ~~(b) Work directly with other states, testing providers, and organizations issuing credentials to accelerate the application process for obtaining state licenses, certifications, registrations, or permits. To fulfill this directive, the department shall seek input from and disseminate information to state agencies and credentialing boards on ways to accelerate the process by which eligible military spouses moving into the Commonwealth may obtain the credentials required for occupational and professional credentialing as expeditiously as possible; and~~
 - ~~(c) Coordinate the activities of other state agencies and credentialing boards to establish a clearinghouse by which information on obtaining licenses, certificates, registration, and permits may be accessed. In coordinating the information, the department shall compile information from other state agencies and credentialing boards on the occupations and professions requiring a state permit, registration, certification, license, or other qualifying document and the name, telephone number, and address of a contact person for each such occupation or profession.~~
- ~~(2) Any state agency or credentialing board issuing permits, registrations, certificates, or licenses that are a prerequisite to a person engaging in an occupation or profession shall assist the Kentucky Department of Military Affairs in expediting the application process for such permits, registrations, certificates, or licenses for military spouses who come into Kentucky because their spouses are reassigned by the military.~~

- ~~(3) The department shall prepare and issue an annual report on its activities in meeting the directives of this section by June 1 of each year. A copy of the report shall be submitted to the Interim Joint Committee on Licensing and Occupations and the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection].~~

Section 3. The following KRS section is repealed:

36.478 "Mission: Welcome Home" Program.

Approved March 21, 2007.

CHAPTER 56

(HB 514)

AN ACT relating to the assumption of duties by local elected officers and declaring an emergency.

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

Section 1. KRS 62.010 is amended to read as follows:

- (1) No officer shall enter upon the duties of his office until he takes the oath required of him by law.
- (2) Each person elected to an office shall take the oath of office on or before the day the term of office to which he has been elected begins, ***except in years where the first Monday in January falls upon January 1. In years where the first Monday falls upon January 1, no penalty shall be applied to any officer that fails to take the oath of office, so long as the oath of office is taken within thirty (30) days of the first Monday of January.***
- (3) Each person appointed to an office shall take the oath of office within thirty (30) days after he receives notice of his appointment.

Section 2. KRS 62.050 is amended to read as follows:

- (1) Except as otherwise provided by statute, no officer required by law to give bond shall enter upon the duties of his office until he gives the bond, ***except in years where the first Monday in January falls upon January 1. In years where the first Monday falls upon January 1, no penalty shall be applied to any officer that fails to give bond, so long as bond is given within thirty (30) days of the first Monday of January.***
- (2) Except as otherwise provided by statute, each person elected to an office who is required to give bond shall give the bond on or before the day the term of office to which he has been elected begins.
- (3) Each person appointed to an office who is required to give bond shall give the bond within thirty (30) days after he receives notice of his appointment.

Section 3. KRS 62.020 is amended to read as follows:

- (1) The official oath of any officer may be administered by:
 - (a) Any state or federal judge, with Kentucky jurisdiction; or
 - (b) ***Any member of the General Assembly for an oath statewide; or***
 - (c) Any county judge/executive, notary public, clerk of a court, or justice of the peace, within his district or county.
- (2) For those officers listed in paragraphs (a), (b), (c), (d), and (e) of this subsection, the person administering the oath shall certify in writing that the oath of office was administered and the date of its administration. The person administering the oath shall file a written certification:
 - (a) In the Secretary of State's office for:
 1. A member of the General Assembly;
 2. An officer elected from the state at large;
 3. An officer elected from a district greater than one (1) county; or
 4. An officer elected from a city whose boundaries extend beyond those of a single county;
 - (b) In the Secretary of State's office for:

1. An officer appointed cabinet secretary; or
 2. An officer appointed a deputy or assistant to an elected constitutional officer and who is required by separate statute to take the oath of office;
- (c) In the Governor's office for the Secretary of State and the assistant Secretary of State;
- (d) In the office of the county clerk for the county from which an officer is elected to countywide office or office for a district within the county. However, the requirements of this paragraph shall not apply when the requirements of paragraph (a) of this subsection apply; and
- (e) In the office of a circuit clerk for a county clerk within the jurisdiction of that circuit clerk.

Section 4. The provisions of this Act shall apply retroactively to any elected officer required to take the oath of office and execute bond by the first Monday of year 2007.

Section 5. Whereas it is in the interest of the People of the Commonwealth that any disputes concerning the assumption of duties be speedily and efficiently resolved, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved March 21, 2007.

CHAPTER 57

(HJR 84)

A JOINT RESOLUTION honoring distinguished Kentuckians for their service to the Commonwealth.

WHEREAS, from time to time, the General Assembly has seen fit to honor various Kentuckians by erecting memorials and naming portions of state highways in their honor; and

WHEREAS, these Kentuckians have come from all walks of life, held a multitude of jobs, and had a variety of reasons that they were deserving of the honor; and

WHEREAS, these individuals have included former Governors, decorated veterans, slain law enforcement officers, local elected officials, astronauts, doctors, educators, distinguished athletes, and civic leaders; and

WHEREAS, the General Assembly again sees fit to honor a group of individuals who have made the lives of their fellow Kentuckians better and brought honor and respect to the Commonwealth;

NOW, THEREFORE,

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

Section 1. (1) The members of this body, both individually and collectively, commend and applaud former Governor Bert T. Combs for his efforts and accomplishments in improving the lives of ordinary Kentuckians and moving the state forward.

(2) Within 30 days of the effective date of this Resolution, the Kentucky Transportation Cabinet shall erect the statue of Bert T. Combs, provided by the community of Stanton, in Powell County on Kentucky Route 213, on the surplus land across from the U.S. Post Office in the community of Stanton.

Section 2. (1) The Transportation Cabinet shall honor Denzil "Hoss" Halbert by naming the bridge on the new Kentucky Route 80 nearest to downtown Martin, in Martin, Kentucky, in Floyd County, the "Denzil 'Hoss' Halbert Memorial Bridge".

(2) The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at each end of the bridge specified in this section that read "Denzil 'Hoss' Halbert Memorial Bridge."

Approved March 21, 2007.

CHAPTER 58**(HB 374)**

AN ACT relating to voting rights for persons with disabilities.

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

Section 1. KRS 387.580 is amended to read as follows:

- (1) At a hearing convened under KRS 387.500 to 387.770 for a determination of partial disability or disability, the jury shall:
 - (a) Inquire into the nature and extent of the general intellectual functioning of the respondent;
 - (b) Inquire into the respondent's capacity to make informed decisions concerning his personal affairs and financial resources;
 - (c) Determine whether the respondent is disabled, partially disabled, or has no disability in relation to the management of his financial resources; and
 - (d) Determine whether the respondent is disabled, partially disabled, or has no disability in relation to the management of his personal affairs.
- (2) If the respondent is found not to be disabled or partially disabled, the petition shall be dismissed.
- (3) If the respondent is found to be disabled or partially disabled, the court shall, at the same hearing, without a jury, determine:
 - (a) The type of guardian or conservator to be appointed;
 - (b) The specific legal disabilities to which the respondent is subject, if the respondent has been determined to be partially disabled;
 - (c) ***Whether the respondent retains the right to vote;***
 - (d) The corresponding powers and duties of the limited guardian or limited conservator, if the respondent has been determined to be partially disabled;
 - ~~(e)(d)~~ The individual or entity to be appointed by the court as limited guardian, guardian, limited conservator, or conservator;
 - ~~(f)(e)~~ The individual or entity, if any, to be appointed as standby guardian or conservator; and
 - ~~(g)(f)~~ The duration of the term of guardianship or conservatorship.

Section 2. KRS 387.590 is amended to read as follows:

- (1) If the respondent is found partially disabled in managing his personal affairs, but not partially disabled or disabled in managing his financial resources, a limited guardian shall be appointed.
- (2) If the respondent is found partially disabled in managing his financial resources, but not partially disabled or disabled in managing his personal affairs, a limited conservator shall be appointed.
- (3) If the respondent is found partially disabled in managing both his personal affairs and financial resources, a limited guardian shall be appointed, unless the court considers it in the best interest of the ward to appoint both a limited guardian and a limited conservator.
- (4) If the respondent is found disabled in managing his financial resources, but not partially disabled or disabled in managing his personal affairs, a conservator shall be appointed.
- (5) If the respondent is found disabled in managing both his personal affairs and financial resources, a guardian shall be appointed, unless the court considers it in the best interest of the ward to appoint both a limited guardian and a conservator.
- (6) The order of appointment of a limited guardian, guardian, limited conservator, or conservator shall specify:
 - (a) The type of guardianship or conservatorship to which the ward is subject;
 - (b) The name and address of the limited guardian, guardian, limited conservator, or conservator;

- (c) The name and address of the standby guardian or conservator, if a standby guardian or conservator is designated;
 - (d) The specific legal disabilities to which the respondent is subject, if the respondent has been determined to be partially disabled;
 - (e) The corresponding powers and duties of the limited guardian or limited conservator, if the respondent has been determined to be partially disabled; and
 - (f) The duration of the term of guardianship or conservatorship.
- (7) A limited guardian or limited conservator shall not be appointed for a term greater than five (5) years and may be appointed for a lesser period. A guardian or conservator may be appointed for a period of unlimited duration.
- (8) The judgment of partial disability or disability and the order of appointment shall be filed in the District Court. The judgment shall be indexed by the county clerk in the book in which notices of actions and encumbrances are indexed. Unless such judgment is filed and indexed, it shall not constitute notice to any subsequent bona fide purchaser for value, mortgagee, or encumbrancer.
- (9) If the respondent is determined to be disabled or partially disabled but no limited guardian, guardian, limited conservator, or conservator is appointed at the hearing, the determination shall have no legal effect.
- (10) The rights of which a ward is legally deprived upon a determination of disability in managing his personal affairs and financial resources include, but are not limited to, the right to ~~vote,~~ dispose of property, execute instruments, enter into contractual relationships, determine his living arrangements, consent to medical procedures, and obtain a motor vehicle operator's license. ***A ward shall only be deprived of the right to vote if the court separately and specifically makes a finding on the record as established in subsection (3)(c) of Section 1 of this Act.***
- (11) A partially disabled or disabled person for whom a limited guardian, limited conservator, or conservator has been appointed retains all legal and civil rights except those which have by court order been designated as legal disabilities or which have been specifically granted to the limited guardian, limited conservator, or conservator. A person who is partially disabled may be subject to some but not all of the disabilities specified in subsection (10) of this section.

Approved March 21, 2007.

CHAPTER 59

(SB 29)

AN ACT relating to alcoholic beverages.

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

Section 1. KRS 244.130 is amended to read as follows:

- (1) Except in conformity with regulations of the board, no licensee under KRS 243.020 to 243.670 shall advertise or cause or permit to be advertised in any manner any product which he or she is licensed to manufacture or sell.
- (2) Subsection (1) of this section shall not prohibit:
 - (a) Advertising in newspapers, magazines, or periodicals having a general circulation;
 - (b) Promotional advertising on radio or television limited to no more than the name of the licensee and the products the licensee is permitted to manufacture or sell;
 - (c) Promotional advertising containing the names of establishments or products displayed on uniforms or equipment of sporting teams; ***or***
 - (d) ***Promotional advertising mailed or delivered to a consumer's residence.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

In order to promote economic development and tourism, other provisions of the Kentucky Revised Statutes notwithstanding, the Alcoholic Beverage Control Board may issue a horse race track license under KRS 243.030 and a retail malt beverage license under KRS 243.040 to a horse track that is licensed under KRS 230.300 and is located in a city that has, in whole or in part, voted to discontinue prohibition. The license issued under this section shall be in effect only for race track premises where live racing meets were held in 2006. Nothing in this section shall be construed as authorizing the issuance of any alcoholic beverage license on any part of the track's premises that is located outside the city's limits.

Approved March 21, 2007.

CHAPTER 60

(HJR 23)

A JOINT RESOLUTION renaming the White City Wildlife Management Area the Joseph Fay Britt-White City Wildlife Management Area.

WHEREAS, the White City Wildlife Management Area in western Kentucky contains 5,400 acres; and

WHEREAS, Fay Britt was instrumental in convincing the Department of Fish and Wildlife Resources Commission to purchase the land from the Peabody Coal Company in 1977 for \$250,000, which was half of the land's value at that time; and

WHEREAS, upon the sale of the land to the commission, Mr. Britt worked to see that the White City Wildlife Management Area was developed and improved; and

WHEREAS, Fay Britt had been a lifelong supporter of hunting and fishing activities, and was a member of the Department of Fish and Wildlife Resources Commission for 12 years; and

WHEREAS, renaming the area in honor of Mr. Britt would reflect the appreciation that the Commonwealth shows for Mr. Britt's dedication to improving the wildlife resources of our state;

NOW, THEREFORE,

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

Section 1. The White City Wildlife Management Area is hereby renamed the Joseph Fay Britt-White City Wildlife Management Area.

Approved March 21, 2007.

CHAPTER 61

(HJR 137)

A JOINT RESOLUTION directing the Cabinet for Health and Family Services to provide resources and support for the Office of the Ombudsman for the Cabinet to track and report on trends in the receipt, review, and resolution of citizen complaints about child protection programs and services.

WHEREAS, the Office of the Ombudsman is required by KRS 194A.030 to review and resolve citizen complaints about programs and services of the Cabinet for Health and Family Services when those complaints are unable to be resolved through normal channels; and

WHEREAS, the Office of the Ombudsman is required by KRS 194A.030 to provide professional support in the evaluation of programs including quality improvement and information analysis and reporting, including contract monitoring, program monitoring, and the development of quality service delivery; and

WHEREAS, the report titled "the 'other' Kentucky lottery: Child Protection & Permanency for Abused & Neglected Children in Kentucky in 2005," a joint project of the National Institute on Children, Youth & Families, Inc. and Kentucky Youth Advocates, Inc., found that the quality of services provided to neglected and abused children in Kentucky is subject to the vagaries of geography – like where a child might live – and the luck of the draw as to which social workers they are assigned; and

WHEREAS, the January 10, 2007, investigative report prepared by the Office of the Inspector General found that the Office of the Ombudsman is an underutilized resource for ensuring the integrity of the Department for Community Based Services' actions; and

WHEREAS, the Office of the Inspector General report recommended that any complaint justified by the Office of the Ombudsman should result in a written action plan for the resolution of the issue; and

WHEREAS, the Children's Bureau, U.S. Department of Health and Human Services, which administers the Child and Family Services Reviews, believes that one of the most important ways to promote positive outcomes for children and their families is to ensure the quality and frequency of caseworker visits with children and families; and

WHEREAS, as of August 2006, the Department for Community Based Services was working with approximately 19,600 children who were victims of maltreatment, were dependent, or had committed status offenses, and there were 7,431 children in state custody; and

WHEREAS, the total number of complaints related to protection and permanency received by the Office of the Ombudsman increased from 1,330 in 2002 to 3,255 in 2006, an increase of over 40%, and of those contacts, the number of issues found not to conform to cabinet policy increased from 71 in 2002 to 141 in 2006, an increase of over 50%; and

WHEREAS, the total number of contacts related to child protection-related complaints about caseworkers rose from 67 in 2002 to 217 in 2006, an increase of over 30% and of those contacts, the number of issues found not to conform to cabinet policy increased from 2 in 2002 to 6 in 2006; and

WHEREAS, the Office of the Ombudsman has received little increased support in staff or resources to correspond with the increased workload related to child protection and permanency complaints; and

WHEREAS, many states are currently reviewing the authority, duty, and independence of ombudsman offices addressing child welfare issues, including California and Virginia; and

WHEREAS, it is the duty of the General Assembly to ensure the protection of children and the promotion of strong families in the Commonwealth;

NOW, THEREFORE,

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

Section 1. The Cabinet for Health and Family Services shall provide the Office of the Ombudsman with resources and support to track and report on trends in the receipt, review, and resolution of citizen complaints about child protection programs and services. The Office of the Ombudsman shall track citizen complaints for each family service worker and supervisor by county and report to the secretary of the cabinet any occurrence of ten or more complaints for a single county within a six month period.

Section 2. The Cabinet for Health and Family Services shall investigate any occurrence of ten or more complaints for a single county within a six month period as reported by the Office of the Ombudsman and report to the Interim Joint Committee on Health and Welfare and the House of Representatives on the number of investigations and the outcome of the investigations for the previous calendar year by January 31 of each year.

Approved March 21, 2007.

CHAPTER 62

(SB 171)

AN ACT relating to unemployment insurance.

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

Section 1. KRS 271B.14-220 is amended to read as follows:

- (1) A corporation administratively dissolved under KRS 271B.14-210, or revoked under the provisions of KRS 271A.615, which was repealed by 1988 Ky. Acts, ch. 23, sec. 248, may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution or revocation. The application shall:

- (a) Recite the name of the corporation and the effective date of its administrative dissolution or revocation;

- (b) State that the ground or grounds for dissolution or revocation either did not exist or have been eliminated;
 - (c) State that the corporation's name satisfies the requirements of KRS 271B.4-010;
 - (d) Contain a certificate from the Department of Revenue reciting that all taxes owed by the corporation have been paid;~~and~~
 - (e) ***Contain a certificate from the Division of Unemployment Insurance in the Department for Workforce Investment reciting that all employer contributions, interest, penalties, and service capacity upgrade fund assessments have been paid; and***
 - (f) Be accompanied by the reinstatement penalty and the current fee for filing each delinquent annual report provided for in KRS 271B.1-220.
- (2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, he shall cancel the certificate of dissolution or revocation and prepare a certificate of existence that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation by mailing the notice by first class mail to the corporation at its registered office.
 - (3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution or revocation and the corporation 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 corporation which was administratively dissolved or revoked and has taken the action necessary to wind up and liquidate its business and affairs under KRS 271B.14-050, and notify claimants under KRS 271B.14-060 and 271B.14-070, shall be prohibited from reinstatement.

Section 2. KRS 341.300 is amended to read as follows:

- (1) Contributions unpaid on the date on which they are due and payable, as prescribed by the secretary, shall be subject to interest at the rate of one and five-tenths percent (1.5%) per month or fraction thereof, not to exceed ninety percent (90%) of the amount of such contributions, from and after such date until payment is received by the Office of Employment and Training, Department of Workforce Investment, irrespective of whether such delinquency has been reduced to a judgment or not as provided in subsection (2) of this section or is the subject of an administrative appeal or court action. Such interest shall be paid into the unemployment compensation administration fund.
- (2) If, after due notice, any subject employer defaults in any payment of contributions, interest or penalties thereon, the amount due shall be collected by a civil action instituted in the Franklin Circuit Court or the Franklin District Court depending upon the jurisdictional amount in controversy including interest and penalties in the name of the state, and the subject employer adjudged in default shall pay the costs of the action. Civil actions brought under this section shall be heard by the court, without the intervention of a jury, at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law.
- (3) At or after the commencement of an action under subsection (2) of this section attachment may be had against the property of the liable subject employer for such contributions, interest and penalties without the execution of a bond, or after judgment has been entered an execution may be issued against the property of such employer without the execution of a bond.
- (4) An action for the recovery of contributions, interest, or penalties under this section shall be barred and any lien therefor shall be canceled and extinguished unless collected or suit for collection has been filed within ***ten (10)***~~five (5)~~ years from the due date of such contributions, except in the case of the filing of a false or fraudulent report the contributions due shall not be barred and may at any time be collected by the methods set out in this chapter, including action in a court of competent jurisdiction.

Section 3. KRS 341.410 is amended to read as follows:

The secretary acting through his duly authorized representatives shall, upon request, determine the insured status of a worker. If a worker is found to have fully insured status, as defined in KRS 341.090(3), the Division of Unemployment Insurance shall notify all interested parties. If found to be not fully insured, the division shall notify

the worker. The secretary may, at any time~~[within a worker's benefit year]~~, make~~[such]~~ further determinations as may affect the worker's eligibility for benefits or may set aside, reconsider, modify, or amend a determination at any time on the basis of additional information or to correct a clerical mistake. The ~~secretary~~~~[commission]~~ may by regulation prescribe what constitutes a determination as used in this section and KRS 341.420(2) and (3). ***Any further determination made pursuant to this section may be appealed pursuant to KRS 341.420.***

Section 4. KRS 341.800 is amended to read as follows:

- (1) In addition to any other remedy provided by the laws of the Commonwealth, if any subject employer assessed or determined liable for the payment of contributions, including penalties and interest, refuses to pay contributions when due and has not sought administrative or judicial review of the assessment or determination as provided for in this chapter, or if such subject employer has exhausted or abandoned administrative or judicial review provided in this chapter so that the assessment or determination is final, due and owing, then the secretary or his delegate may cause a demand to be made on the subject employer for the payment thereof. If the contributions, including interest and penalties, remain unpaid for ten (10) days after demand, then the secretary or his delegate may collect the contributions, including interest and penalties, and the costs of such collection by levy upon all nonexempt real and personal property, disposable earnings, and right to property, belonging to the subject employer or on which there is a lien provided in this chapter for the payment of such contributions.
- (2) As soon as practicable after seizure of property, notice in writing shall be given by the secretary or his delegate to the owner of the property. The notice shall be given to the owner either in person or by certified mail to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.
- (3) The secretary or his delegate shall as soon as practicable after the seizure of the property cause a notification of the sale of the seized property to be published in the newspaper with the largest circulation within the county wherein such seizure is made. Such notice shall be published once each week for three (3) successive weeks. In addition, such notice shall be posted at the courthouse and three (3) other public places in the county where the seizure is made for fifteen (15) days next preceding sale. The notice shall specify the property to be sold, and the time, place, manner, and condition of the sale thereof.
- (4) If any property liable to levy is not divisible, so as to enable the secretary or his delegate by sale of a part thereof to raise the whole amount of the contributions, penalty, interest and cost of the levy, the whole of such property shall be sold.
- (5) The time of sale shall not be less than thirty (30) nor more than ninety (90) days from the time the seizure is made. The place of sale shall be within the county in which the property is seized, except by special order of the secretary.
- (6) The sale shall not be conducted in any manner other than by public auction, or by public sale under sealed bids. In the case of the seizure of several items of property, the secretary or his delegate may offer such items for sale separately, in groups, or in the aggregate and accept whichever method produces the highest aggregate amount.
- (7) The secretary or his delegate shall determine whether payment in full shall be required at the time of acceptance of a bid, or whether a part of such payment may be deferred for such period, not to exceed one (1) month, as he may determine to be appropriate. If payment in full is required at the time of acceptance of a bid and is not then and there paid, the secretary or his delegate shall forthwith proceed to again sell the property as provided in subsection (6) of this section. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid, within the prescribed period, suit may be instituted in the Franklin Circuit Court or the Circuit Court of the county where the sale was conducted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of twelve percent (12%) per annum from the date of the sale; or, in the discretion of the secretary, the sale may be declared to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in this section. In the event of such readvertisement and sale, any new purchaser shall receive such property or rights to property, free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited.

- (8) If the secretary or his delegate determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, he shall appraise the value of such property and, if the owner of the property can be readily found, the secretary or his delegate shall give him notice of such determination of the appraised value of the property. The property shall be returned to the owner if, within such time as may be specified in the notice, the owner pays to the secretary or his delegate an amount equal to the appraised value, or gives bond in such form, with such sureties, and in such amount as the secretary or his delegate determines to be appropriate in the circumstances. If the owner does not pay such amount or furnish such bond in accordance with this subsection, the secretary or his delegate shall as soon as practicable make public sale of the property without regard to the advertisement requirements or the time limitations contained in subsections (3) and (5) of this section.
- (9) No proceedings under this section shall be commenced more than ~~ten (10)~~^{five (5)} years after the assessment or determination becomes final.
- (10) The term "levy" as used in KRS 341.800 to 341.830 includes the power of distraint and seizure. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the secretary or his delegate may levy upon property or rights thereto, he may seize and sell such property and rights to property, whether real, personal, tangible or intangible.

Section 5. Section 1 of this Act takes effect July 1, 2008.

Approved March 21, 2007.

CHAPTER 63

(SJR 6)

A JOINT RESOLUTION calling for a comprehensive state strategy to address the needs of persons with Alzheimer's disease and related disorders in the Commonwealth of Kentucky.

WHEREAS, Alzheimer's disease is a slow, progressive disorder of the brain that results in loss of memory and other cognitive function and, eventually, results in death; and

WHEREAS, because Alzheimer's is accompanied by memory loss, poor judgment, changes in personality and behavior, and a tendency to wander, individuals with this disease are at increased risk for accidental injury, getting lost, abuse, neglect, and exploitation; and

WHEREAS, one in ten persons over the age of 65 and almost one in every two people over the age of 85 has Alzheimer's disease or a related dementia; and

WHEREAS, over the past ten years, the number of Kentuckians with Alzheimer's and related dementia has risen dramatically to over 74,000 people and is expected to increase to over 97,000 by 2025, when baby boomers enter the age of greatest risk for Alzheimer's; and

WHEREAS, by 2005, the number of the baby boomer generation entering the age of greatest risk for Alzheimer's is expected to increase to over 97,000; and

WHEREAS, Alzheimer's disease takes an enormous toll on loving family members as caregivers watch the deleterious effects of the disease closely and often suffer more stress, depression, and health problems than caregivers of people with other illnesses; and

WHEREAS, Alzheimer's disease is considered to be early in onset if an individual is younger than age 65 when symptoms first appear in the 30s, 40s, and 50s; and

WHEREAS, new data shows that there may be half a million Americans under the age of 65 who have dementia or cognitive impairment at a early onset; and

WHEREAS, the Commonwealth of Kentucky recently undertook the Kentucky Elder Readiness Initiative (KERI) to examine its ability to meet the needs of a rapidly aging population and the Long Term Living Initiative to examine Medicaid and continuum of care services; and

WHEREAS, the Commonwealth of Kentucky needs to assess the current and future impact of Alzheimer's disease on Kentuckians and state systems, programs, and services to ensure an integrated, comprehensive, coordinated, and up-to-date strategy to address the needs of this growing segment of Kentucky's population; and

WHEREAS, within the Cabinet for Health and Family Services there is an Office on Alzheimer's Disease and Related Disorders and an Alzheimer's Disease and Related Disorders Advisory Council, which was established by statute; and

WHEREAS, the office and council are charged with overseeing policy and services affecting residents of Kentucky with dementia and their families and caregivers; recommending delivery of services in the most effective and efficient manner possible to facilitate the needs of people with dementia and their caregivers; assisting with the dissemination of program and educational materials; promoting public and professional awareness and education of dementia and access to needed services and programs; and enhancing the quality of life for persons affected by Alzheimer's, and their caregivers; and

WHEREAS, currently state programs, resources, information and services serving this population are fragmented and many are out-dated;

NOW, THEREFORE,

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

Section 1. The Kentucky Alzheimer's Disease and Related Disorders Advisory Council and Office are directed to assess the current and future impact of Alzheimer's disease on Kentuckians; to examine the existing services and resources addressing the needs of persons with Alzheimer's, their families, and caregivers; and to develop a strategy to mobilize a state response to this public health crisis.

Section 2. The Kentucky Alzheimer's Disease and Related Disorders Advisory Council shall include an examination of the following in its assessment and recommendations:

- (1) Trends in state Alzheimer's population and needs, including the changing population with dementia, including but not limited to:
 - (a) State role in long-term care, family caregiver support, and assistance to persons with early-state and early onset of Alzheimer's; and
 - (b) State policy regarding persons with Alzheimer's and developmental disabilities;
- (2) Existing services, resources, and capacity, including but not limited to the:
 - (a) Type, cost and availability of dementia services;
 - (b) Capacity of public safety and law enforcement to respond to persons with Alzheimer's;
 - (c) Availability of home- and community-based resources for persons with Alzheimer's and respite care to assist families;
 - (d) Inventory of long-term care special dementia care units;
 - (e) Adequacy and appropriateness of geriatric-psychiatric units for persons with behavior disorders associated with Alzheimer's and related dementia;
 - (f) Assisted living residential options for persons with dementia; and
 - (g) State support of Alzheimer's research through Kentucky universities and other resources; and
- (3) Needed state policies or responses, including but not limited to recommendations for the provision of clear and coordinated services and supports to persons and families living with Alzheimer's and related disorders and strategies to address any identified gaps in services.

Section 3. The Kentucky Alzheimer's Disease and Related Disorders Advisory Council is directed to submit a report of its findings and recommendations to the Kentucky General Assembly and the Governor no later than January, 2008.

Approved March 21, 2007.

CHAPTER 64**(HB 114)**

AN ACT relating to jail canteen accounts.

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

Section 1. KRS 441.135 is amended to read as follows:

- (1) The jailer may maintain a canteen for the benefit of prisoners lodged in the jail and may assign such jail employees and prisoners to operate the canteen as are necessary for efficient operation.
- (2) All profits from the canteen shall be used for the benefit and to enhance the well-being of the prisoners. The jailer shall keep books of accounts of all receipts and disbursements from the canteen and shall annually report to the county treasurer on the canteen account.
- (3) Allowable expenditures from a canteen account shall include but not be limited to recreational, vocational, and medical purposes.
- (4) ***Except in counties containing an urban-county government or a consolidated local government***, in order to ensure adequate, ongoing funding of jail canteen accounts, beginning July 1, 2007, and ***on the first day of each fiscal*** ~~each~~ year thereafter, ***the jail canteen account balance shall at least equal the following amounts*** ~~[funds shall be transferred by the fiscal court into the jail canteen account]~~ based on the average daily inmate population of the jail:
 - (a) ***300 prisoners or more*** ***\$6,000***
 - (b) ***200 to 299 prisoners*** ***\$4,000***
 - (c) ***100 to 199 prisoners*** ***\$2,000***
 - (d) ***99 or fewer prisoners*** ***\$1,000***.
- (5) For purposes of calculating the amount to be transferred to the jail canteen account, the average daily number of inmates shall be equal to the average daily inmate population of the jail in the immediately preceding fiscal year. ~~[The amount of funds to be transferred shall be as follows:~~
 - (a) ~~300 prisoners or more~~ ~~\$6,000~~
 - (b) ~~200 to 299 prisoners~~ ~~\$4,000~~
 - (c) ~~100 to 199 prisoners~~ ~~\$2,000~~
 - (d) ~~99 or fewer prisoners~~ ~~\$1,000]~~

Approved March 21, 2007.

CHAPTER 65**(HB 386)**

AN ACT relating to librarians and libraries.

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

Section 1. KRS 171.270 is amended to read as follows:

The board shall require a fee of not less than ***five dollars (\$5)*** ~~[one dollar (\$1)]~~ nor more than ***twenty dollars (\$20)*** ~~[five dollars (\$5)]~~ to be paid by each applicant for a librarian's certificate.

Section 2. KRS 171.280 is amended to read as follows:

The revolving fund established by the branch budget bill, consisting of all moneys collected under the provisions of KRS 171.230 to ***171.306*** ~~[171.300]~~ shall be designated as the librarian's certification fund. All money credited to the fund shall be used for the support of the Board for Certification of Librarians, and for the purposes of KRS 171.230 to ***171.306*** ~~[171.300]~~.

Section 3. KRS 173.810 is amended to read as follows:

- (1) The Kentucky State Advisory Council on Libraries is hereby created and shall be composed of twenty-one (21) members, appointed by the Governor for a term of four (4) years, except that of the twenty-one (21) members initially appointed, six (6) shall serve terms of four (4) years, five (5) shall serve terms of three (3) years, five (5) shall serve terms of two (2) years and five (5) shall serve terms of one (1) year. The Governor of the Commonwealth of Kentucky shall appoint from this membership a chairman and co-chairman to serve for periods of two (2) years each. The council shall be attached to the *Education* Cabinet~~for Education and the Arts~~ for administrative purposes.
- (2) Of the twenty-one (21) members, four (4) shall represent public libraries, two (2) shall represent school libraries, two (2) shall represent college or university libraries, *four (4) shall represent special and*~~two (2) shall represent special libraries, two (2) shall represent~~ institutional libraries, two (2) shall represent library users with disabilities and seven (7) members, at least one (1) of whom shall be representative of disadvantaged persons, shall represent library users.
- (3) Vacancies shall be filled by the Governor in the same manner as initial appointments are made.
- (4) Members of the Kentucky State Advisory Council on Libraries shall be compensated for actual and necessary expenses.
- (5) The council shall be the state advisory council on libraries for the purposes of *advising the Kentucky Department for Libraries and Archives on federal and state library development issues*~~Section 3(8) of the Federal Library Services and Construction Act~~.

Section 4. KRS 171.230 is amended to read as follows:

The provisions of KRS 171.240 to *171.306*~~171.300~~ shall apply to public libraries as defined in KRS 171.125.

Section 5. KRS 171.250 is amended to read as follows:

- (1) The board shall grant certificates of librarianship to applicants who are graduates of library schools approved by the board and shall grant certificates to other applicants when it has satisfied itself that the applicant is qualified for library work. Applicants shall provide such information as required by the board to determine their qualifications.
- (2) The board may issue renewals, determine the positions for which certificates of librarianship shall be required, and may adopt rules and regulations for its own government and for carrying out the purposes of KRS 171.230 to *171.306*~~171.300~~.
- (3) The board may issue certificates to qualified persons who are serving in libraries not supported from public funds.
- (4) Librarians who were in service on May 31, 1938, and served one (1) year prior to such date shall be entitled to receive a life certificate in accordance with their qualifications, without examination, upon the payment of prescribed fee.

Section 6. KRS 171.260 is amended to read as follows:

No library coming under the provisions of KRS 171.230 to *171.306*~~171.300~~ shall have in its employ, in the position of librarian, or in any other full-time library service position, a person who does not hold an appropriate certificate of librarianship issued by the board.

Approved March 21, 2007.

CHAPTER 66

(HCR 154)

A CONCURRENT RESOLUTION confirming the nomination of Eugene Jeffrey Mosley to the Governor's Postsecondary Education Nominating Committee.

WHEREAS, by the authority granted by KRS 164.005, Governor Ernie Fletcher has issued Executive Order 2007-131 appointing Eugene Jeffrey Mosley to the Governor's Postsecondary Education Nominating Committee

representing the 4th Supreme Court District to replace Marc Alan Yussman, whose term has expired, for a term ending April 14, 2012; and

WHEREAS, appointments to the Governor's Postsecondary Education Nominating Committee are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of February 9, 2007, the Governor has delivered Eugene Jeffrey Mosley's name for confirmation as a member of the Governor's Postsecondary Education Nominating Committee, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Eugene Jeffrey Mosley meets the requirements established in KRS 164.005 for membership on the Governor's Postsecondary Education Nominating Committee;

NOW, THEREFORE,

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

Section 1. The House of Representatives and the Senate hereby confirm the appointment of Eugene Jeffrey Mosley to the Governor's Postsecondary Education Nominating Committee representing the 4th Supreme Court District for a term ending April 14, 2012.

Section 2. The Clerk of the House of Representatives shall send notification of the General Assembly's action to Governor Ernie Fletcher, Room 100, State Capitol, Frankfort, Kentucky 40601 and Eugene Jeffrey Mosley, 6003 Windsong Court, Louisville, Kentucky 40207.

Approved March 21, 2007.

CHAPTER 67

(HCR 33)

A CONCURRENT RESOLUTION confirming the reappointment of Vickie Yates Brown to the Kentucky Agricultural Development Board.

WHEREAS, KRS 248.707 requires the Governor to appoint members to the Agricultural Development Board subject to confirmation by the Senate and House of Representatives; and

WHEREAS, on July 12, 2006, by Executive Order 2006-811, the Governor reappointed Vickie Yates Brown to the Agricultural Development Board for a term expiring July 6, 2010; and

WHEREAS, Vickie Yates Brown has been reappointed as meeting the requirements of KRS 248.707, being an attorney with farm experience and familiarity with agricultural policy and who otherwise meets the requirements of KRS 11.160;

NOW, THEREFORE,

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

Section 1. Consent is given to the reappointment of Vickie Yates Brown to the Agricultural Development Board for a term expiring July 6, 2010.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution and notification of its adoption to Vickie Yates Brown, 3922 Massie Avenue, Unit 10, Louisville, Kentucky 40207 and to the Governor.

Approved March 21, 2007.

CHAPTER 68

(HB 443)

AN ACT relating to electronic data matches and levies.

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

Section 1. KRS 131.672 is amended to read as follows:

- (1) To assist the department in the collection of delinquent taxes and debts owed to the Commonwealth, the department shall ~~design, develop, implement, and operate~~ a financial institution match system for the purpose of identifying and seizing the financial assets of delinquent taxpayers and debtors as identified by the department. The provisions of KRS 131.670 to 131.676 shall be applied uniformly to all financial institutions within the Commonwealth ***holding accounts subject to levy as authorized by KRS 131.500 and shall not be implemented in any financial institution unless and until the department is prepared to implement the system in ninety percent (90%) of all financial institutions within a period of no longer than eighteen (18) months from the effective date of this Act, or unless the financial institution in which the system will be implemented and the department agree, in writing, to implement the system sooner in that financial institution***~~[as feasible]~~.
- (2) ***The department and the financial institution shall implement and operate the system identified in subsection (1) of this section by use of the***~~[Each financial institution in the Commonwealth shall, in conjunction with the department, develop and operate a data match system to facilitate the identification and seizure of financial assets of delinquent taxpayers and debtors identified by the department. If a financial institution has a] data match system operated by the financial institution as required by~~~~[developed pursuant to] KRS 205.772 and 205.774~~~~[(2)] for the purpose of administering the child support enforcement programs of the Commonwealth, and if the system is compatible with the requirements of KRS 131.670 to 131.676, the financial institution may utilize that system to comply with the provisions of this subsection]~~.
- (3)
 - (a) When the department determines that the name, record address, and either Social Security number or taxpayer identification number of an account with a financial institution matches the name, record address, and either the Social Security number or taxpayer identification number of a delinquent taxpayer or debtor, a lien or levy shall, subject to the provisions of subsection (4) of this section, arise against the assets in the account at the time of receipt of the notice by the financial institution at which the account is maintained.
 - (b) The department shall provide notice of the following to the debtor or delinquent taxpayer and the financial institution:
 1. The match;
 2. The lien or levy arising therefrom; and
 3. The action to be taken to surrender or encumber the account with the lien or levy for delinquent taxes.

Notice shall be provided to the debtor or delinquent taxpayer within two (2) business days of the date the notice is sent to the financial institution.
- (4) A financial institution ordered to surrender or encumber an account shall be entitled to collect its normally scheduled account activity fees to maintain the account during the period of time the account is seized or encumbered.
- (5) A financial institution may charge an account levied on by the department a fee of not more than twenty dollars (\$20), which may be deducted from the account prior to remitting any funds to the department.
- (6) The department shall bear the cost or, if paid by the delinquent taxpayer or debtor, reimburse the delinquent taxpayer or debtor for any bank charges incurred as a result of any erroneous lien or levy by the department, provided the erroneous lien or levy was caused by department error and, prior to the issuance of the erroneous lien or levy, the delinquent taxpayer or debtor timely responded to all contacts by the department and provided information or documentation sufficient to establish his or her position.

- (7) The department ~~shall~~~~may~~ promulgate administrative regulations to implement KRS 131.670 to 131.676.
- (8) ***For purposes of this section, "financial institution" has the same meaning as provided in KRS 205.772.***

Section 2. KRS 131.990 is amended to read as follows:

- (1) Any person who fails or refuses to obey a subpoena or order of the Kentucky Board of Tax Appeals made pursuant to KRS Chapter 13B shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).
- (2) (a) Any person who violates the intentional unauthorized inspection provisions of KRS 131.190(1) shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (b) Any person who violates the provisions of KRS 131.190(1) by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.
- (c) Any person who violates the intentional unauthorized inspection provisions of KRS 131.190(4) shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.
- (d) Any person who violates the provisions of KRS 131.190(4) by divulging confidential taxpayer information shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than five (5) years, or both.
- (e) Any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the Department of Revenue, member of a county board of assessment appeals, property valuation administrator or employee, or any other person, who violates the provisions of KRS 131.190(1) or (4) may, in addition to the penalties imposed under this subsection, be disqualified and removed from office or employment.
- (3) Any person who willfully fails to comply with the rules and regulations promulgated by the Department of Revenue for the administration of delinquent tax collections shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000).
- (4) Any person who fails to do any act required or does any act forbidden by KRS 131.210 shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
- (5) Any person who fails to comply with the provisions of KRS 131.155 shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty of one-half of one percent (0.5%) of the amount that should have been remitted under the provisions of KRS 131.155 for each failure to comply.
- (6) (a) ***Any person or financial institution that fails to comply with the provisions of Section 1 of this Act and KRS 131.674 within ninety (90) days after notification by the Department of Revenue shall, unless the failure is due to reasonable cause as defined in KRS 131.010, be fined not less than one thousand dollars (\$1,000) and no more than five thousand dollars (\$5,000) for each full month of noncompliance. The fine shall begin on the first day of the month beginning after the expiration of the ninety (90) days.***
- (b) ***Any financial institution that fails or refuses to comply with the provisions of Section 1 of this Act and KRS 131.674 within one hundred twenty (120) days after the notification by the Department of Revenue shall, unless the failure is due to reasonable cause as defined in KRS 131.010, forfeit its right to do business within the Commonwealth, unless and until the financial institution is in compliance. Upon notification by the Department of Revenue, the executive director of the Office of Financial Institutions shall, as applicable, revoke the authority of the financial institutions or its agents to do business in the Commonwealth.***

Section 3. KRS 205.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 205.170 or subsections (1) to (3) of KRS 205.175 shall be guilty of a Class A misdemeanor.
- (2) Any person who violates subsection (4) of KRS 205.175 shall be guilty of a Class D felony.
- (3) Any person who willfully violates any of the provisions of KRS 205.310, or any rule or regulation thereunder, shall be guilty of a Class B misdemeanor. Each failure or violation shall constitute a separate offense.

- (4) Any bank, savings and loan association, credit union, or other financial institution which fails to comply with the provisions of subsection (1) of KRS 205.835 or which submits fraudulent information to the cabinet shall be guilty of a Class A misdemeanor.
- (5) Any bank, savings and loan association, credit union, investment company, savings institution, trust company, insurance or annuity company, pension or profit-sharing trust company, or other financial institution failing to comply with provisions of KRS 405.430(11) shall be subject to a penalty of five hundred dollars (\$500) for each failure to comply.
- (6) ***Any person or financial institution that fails to comply with the provisions of KRS 205.772 or any administrative regulation promulgated under KRS 205.772, within ninety (90) days after notification by the cabinet shall, unless the failure is due to reasonable cause as defined in KRS 131.010, be fined not less than one thousand dollars (\$1,000) and no more than five thousand dollars (\$5,000) for each full month of noncompliance. The fine shall begin on the first day of the month beginning after the expiration of the ninety (90) days.***

Approved March 21, 2007.

CHAPTER 69

(HB 305)

AN ACT relating to minimum wage.

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

Section 1. KRS 337.275 is amended to read as follows:

- (1) Except as may otherwise be provided by this chapter, every employer shall pay to each of his employees wages at a rate of not less than ***five dollars and eighty-five cents (\$5.85) an hour beginning on the effective date of this Act, not less than six dollars and fifty-five cents (\$6.55) an hour beginning July 1, 2008, and not less than seven dollars and twenty-five cents (\$7.25) an hour beginning July 1, 2009.*** ~~If the federal minimum hourly wage as prescribed by 29 U.S.C. sec. 206(a)(1) is increased in excess of the minimum hourly wage in effect under this subsection, the minimum hourly wage under this subsection shall be increased to the same amount, effective on the same date as the federal minimum hourly wage rate. If the state minimum hourly wage is increased to the federal minimum hourly wage, it shall include~~ ~~[- The minimum wage rates required under this chapter shall be adjusted in accordance with adjustments made in the federal minimum hourly rate. The adoption required in this subsection includes]~~ only the federal minimum hourly rate prescribed in 29 U.S.C. sec. 206(a)(1) and ~~shall~~ ***does*** not include other wage rates, or conditions, exclusions, or exceptions to the federal minimum hourly wage rate. In addition, ~~the increase to~~ ~~adoption of~~ the federal minimum hourly wage rate does not extend or modify the scope or coverage of the minimum wage rate required under this chapter.
- (2) Notwithstanding the provisions of subsection (1) of this section, for any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars (\$30) per month in tips from patrons or others, the employer may pay as a minimum not less than the hourly wage rate required to be paid a tipped employee under the federal minimum hourly wage law as prescribed by 29 U.S.C. sec. 203. The employer shall establish by his records that for each week where credit is taken, when adding tips received to wages paid, not less than the minimum rate prescribed in 29 U.S.C. sec. 203 was received by the employee. No employer shall use all or part of any tips or gratuities received by employees toward the payment of the statutory minimum hourly wage as required by 29 U.S.C. sec. 203. Nothing, however, shall prevent employees from entering into an agreement to divide tips or gratuities among themselves.

Section 2. KRS 154.22-040 is amended to read as follows:

- (1) Each year the authority shall under its Rural Economic Development Assistance Program, on the basis of the final unemployment figures calculated by the Office of Employment and Training within the Department of Workforce Investment in the Education Cabinet, determine which counties have had a countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth in the most recent five (5) consecutive calendar years, or which have had an average countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth by two hundred percent (200%) in the most recent

calendar year, and shall certify those counties as qualified counties. A county not certified on the basis of final unemployment figures may also be certified as a qualified county if the authority determines the county is one (1) of the sixty (60) most distressed counties in the Commonwealth based on the following criteria with equal weight given to each criterion:

- (a) The average countywide rate of unemployment in the most recent three (3) consecutive calendar years, on the basis of final unemployment figures calculated by the Office of Employment and Training within the Department of Workforce Investment in the Education Cabinet;
- (b) In each county the percentage of adults twenty-five (25) years of age and older who have attained at least a high school education or equivalent, on the basis of the most recent data available from the United States Department of Commerce, Bureau of the Census; and
- (c) Road quality, as quantified by the access within a county to roads ranked in descending order from best quality to worst quality as follows: two (2) or more interstate highways, one (1) interstate highway, a state four (4) lane parkway, four (4) lane principal arterial access to an interstate highway, state two (2) lane parkway and none of the preceding road types, as certified by the Kentucky Transportation Cabinet to the authority.

If the authority determines that a county which has previously been certified as a qualified county no longer meets the criteria of this subsection, the authority shall decertify that county. The authority shall not provide inducements for any facilities in that county and an approved company shall not be eligible for the inducements offered by KRS 154.22-010 to 154.22-070 unless the tax incentive agreements required herein are entered into by all parties prior to July 1 of the year following the calendar year in which the authority decertified that county. In addition, the authority shall certify coal-producing counties, not otherwise certified as qualified counties in this subsection, for economic development projects involving the new construction of electric generation facilities. A coal producing county shall mean a county in the Commonwealth of Kentucky that has produced coal upon which the tax imposed under KRS 143.020 was paid at any time. For economic development projects undertaken in a regional industrial park, as defined in KRS 42.4588, or in an industrial park created pursuant to an interlocal agreement in which revenues are shared as provided in KRS 65.245, where the physical boundaries of the industrial park lie within two (2) or more counties of which at least one (1) of the counties is a qualified county under this section, an eligible company undertaking an economic development project within the physical boundaries of the industrial park may be approved for the inducements under KRS 154.22-010 to 154.22-080.

- (2) The authority shall establish the procedures and standards for the determination and approval of eligible companies and their economic development projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A. The criteria for approval of eligible companies and economic development projects shall include but not be limited to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to residents of the Commonwealth; and the likelihood of the economic success of the economic development project.
- (3) The economic development project shall involve a minimum investment of one hundred thousand dollars (\$100,000) by the eligible company and shall result in the creation by the eligible company, within two (2) years from the date of the final approval authorizing the economic development project, of a minimum of fifteen (15) new full-time jobs at the site of the economic development project for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth. The authority may extend this two (2) year period upon the written application of an eligible company requesting an extension.
- (4) (a) Within six (6) months after the activation date, the approved company shall compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created with base hourly wages equal to either:
 - 1. Seventy-five percent (75%) of the average hourly wage for the Commonwealth; or
 - 2. Seventy-five percent (75%) of the average hourly wage for the county in which the project is to be undertaken.
- (b) If the base hourly wage calculated in subparagraph (a)1. or (a)2. of this subsection is less than one hundred fifty percent (150%) of the federal minimum wage, then the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage. ***However, for projects receiving preliminary approval of the authority prior to July 1, 2008, the base hourly wage shall be one***

hundred fifty percent (150%) of the federal minimum wage existing on January 1, 2007. In addition to the applicable base hourly wage calculated above, the eligible company shall provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage; however, if the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage, the eligible company may qualify under this section if it provides the employees hired by the eligible company as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the applicable base hourly wage through increased hourly wages combined with employee benefits.

- (c) The requirements of this subsection shall not apply to eligible companies which are nonprofit corporations established under KRS 273.163 to 273.387 and whose employees are handicapped and sheltered workshop workers employed at less than the established minimum wage as authorized by KRS 337.295.

For an eligible company, within a regional industrial park which lies within two (2) or more counties, the calculation of the wage and benefit requirement shall be determined by averaging the average county hourly wage for all counties within the regional industrial park.

- (5) No economic development project which will result in the replacement of agribusiness, manufacturing, or electric generation facilities existing in the state shall be approved by the authority; however, the authority may approve an economic development project that:
 - (a) Rehabilitates an agribusiness, manufacturing, or electric generation facility:
 - 1. Which has not been in operation for a period of ninety (90) or more consecutive days; or
 - 2. For which the current occupant of the facility has published a notice of closure so long as the eligible company intending to acquire the facility is not an affiliate of the current occupant; or
 - 3. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;
 - (b) Replaces an agribusiness, manufacturing, or electric generation facility existing in the Commonwealth:
 - 1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
 - 2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
 - (c) Replaces an existing agribusiness, manufacturing, or electric generation facility located in the same qualified county, and the existing agribusiness, manufacturing, or electric generation facility to be replaced cannot be expanded due to the unavailability of real estate at or adjacent to the agribusiness, manufacturing, or electric generation facility to be replaced. Any economic development project satisfying the requirements of this subsection shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the agribusiness, manufacturing, or electric generation facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority which results in a lease abandonment or lease termination by the approved company without the consent of the lessor.
- (6) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall request materials and make inquiries of the applicant as necessary or appropriate. Upon review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project. After preliminary approval, the authority may by final approval designate an eligible company to be an approved company.

Section 3. KRS 154.23-025 is amended to read as follows:

- (1) Relevant standards for approval of eligible companies and economic development projects shall include but are not limited to creditworthiness of the eligible company, the number of new jobs to be provided by a project to Kentucky residents, and the likelihood that the project will be an economic success.
- (2) An eligible company shall certify to the authority by written application that it makes the following commitments in an economic development project:
 - (a) A minimum investment of one hundred thousand dollars (\$100,000) in the project;
 - (b) Creation of a minimum of ten (10) new full-time jobs at the project site for qualified employees by the activation date, as set forth in KRS 154.23-035 or 154.23-040;
 - (c) A statement that no significant number of existing jobs in the Commonwealth will be lost or adversely affected due to approval of the eligible company and its economic development project; and
 - (d) A statement that the economic development project could reasonably and efficiently locate outside the qualified zone and, without the inducements offered by the authority, the eligible company would likely locate outside the zone.
- (3) (a) No project that will result in the replacement of an existing manufacturing or service or technology facility existing in the Commonwealth shall be approved by the authority; however, the authority may approve a project if the project is one:
 1.
 - a. That rehabilitates a manufacturing or service or technology facility that has not been in operation; or
 - b. For which the current occupant of the facility has published a notice of closure so long as the eligible company intending to acquire the facility is not an affiliate of the current occupant; or
 - c. To which the title is vested in one other than the eligible company and that is sold or transferred under a foreclosure ordered by a court of competent jurisdiction or by order of bankruptcy court;
 2. Replaces a manufacturing or service or technology facility existing in the Commonwealth that been damaged or destroyed by fire, or the title to which shall have been taken under the exercise of the power of eminent domain or is the subject of a nonappealable judgment that grants the power of eminent domain to the authority, in any of these events to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
 3. Replaces an existing manufacturing or service or technology facility located in the same qualified zone that cannot be expanded due to the lack of available real estate at or adjacent to the manufacturing or service or technology facility to be replaced. Any economic development project satisfying the requirements of this paragraph of this subsection shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing or service or technology facility to be replaced.
- (b) No economic development project otherwise satisfying the requirements of paragraph (a) of this subsection shall be approved by the authority that results in a lease abandonment or lease termination by the approved company without the consent of the lessor.
- (4) (a) Within six (6) months after the activation date, the approved company shall compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created with base hourly wages equal to either:
 1. Seventy-five percent (75%) of the average hourly wage for the Commonwealth; or
 2. Seventy-five percent (75%) of the average hourly wage for the county in which the project is to be undertaken.
- (b) If the base hourly wage calculated in subparagraph (a)1. or (a)2. of this subsection is less than one hundred fifty percent (150%) of the federal minimum wage, then the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage. ***However, for projects receiving preliminary approval of the authority prior to July 1, 2008, the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage existing on January 1, 2007.*** In addition to the applicable base hourly wage calculated above, the eligible company shall provide employee

benefits equal to at least fifteen percent (15%) of the applicable base hourly wage; however, if the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage, the eligible company may qualify under this section if it provides the employees hired by the eligible company as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the applicable base hourly wage through increased hourly wages combined with employee benefits.

Section 4. KRS 154.24-090 is amended to read as follows:

The authority shall promulgate administrative regulations in accordance with KRS Chapter 13A, regarding the approval of eligible companies and economic development projects conducted by those companies. The criteria for approval of eligible companies and economic development projects shall include but not be limited to the following criteria:

- (1) A determination by the authority that more than seventy-five percent (75%) of services provided by the eligible company from the proposed project shall be provided for persons located outside the Commonwealth during each year of the period during which it receives inducements as authorized in KRS 154.24-110;
- (2) The economic development project shall result in the creation by the eligible company of a minimum of fifteen (15) new full-time jobs for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth at the activation date set forth in the company's service and technology agreement as described in KRS 154.24-120. The activation date shall occur within two (2) years after the date of the final resolution authorizing the economic development project. The authority may extend the period for compliance with this subsection up to one (1) year from the activation date upon the written application of an eligible company requesting an extension;
- (3)
 - (a) Within six (6) months after the activation date, the approved company shall compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created with base hourly wages equal to either:
 1. Seventy-five percent (75%) of the average hourly wage for the Commonwealth; or
 2. Seventy-five percent (75%) of the average hourly wage for the county in which the project is to be undertaken.
 - (b) If the base hourly wage calculated in subparagraph (a)1. or (a)2. of this subsection is less than one hundred fifty percent (150%) of the federal minimum wage, then the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage. ***However, for projects receiving preliminary approval of the authority prior to July 1, 2008, the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage existing on January 1, 2007.*** In addition to the base hourly wages, the eligible company shall provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wages; however, if the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wages, the eligible company may qualify under this section if it provides the employees hired by the eligible company as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the applicable base hourly wages through increased hourly wages combined with employee benefits;
- (4) Written evidence that:
 - (a) Approval of the economic development project and the resulting inducements to be offered are essential to the creation of new jobs in the Commonwealth by an eligible company in connection with its economic development project; and
 - (b) No significant number of existing jobs in the Commonwealth will be lost, or adversely affected, due to the designation of an eligible company as an approved company, and to the approval of the eligible company's economic development project; and
- (5) That the economic development project could reasonably and efficiently locate outside of the Commonwealth and, without the inducements offered by the authority, the eligible company would likely locate outside the state.

Section 5. KRS 154.28-080 is amended to read as follows:

- (1) The authority shall promulgate standards for the determination and approval of eligible companies and their economic development projects in accordance with KRS Chapter 13A.
- (2) The standards for approval of eligible companies and economic development projects shall include but not be limited to: the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to the residents of the Commonwealth; and the likelihood of the economic success of the economic development project.
- (3) The economic development project shall involve a minimum investment of one hundred thousand dollars (\$100,000) by the eligible company and shall result in the creation by the eligible company, within two (2) years from the date of the final resolution authorizing the economic development project, of a minimum of fifteen (15) new full-time jobs at the site of the economic development projects for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth. The authority may extend this two (2) year period upon the written application of an eligible company requesting an extension.
- (4)
 - (a) Within six (6) months after the activation date, the approved company shall compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created with base hourly wages equal to either:
 1. Seventy-five percent (75%) of the average hourly wage for the Commonwealth; or
 2. Seventy-five percent (75%) of the average hourly wage for the county in which the project is to be undertaken;
 - (b) If the base hourly wage calculated in subparagraph (a)1. or (a)2. of this subsection is less than one hundred fifty percent (150%) of the federal minimum wage, then the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage. ***However, for projects receiving preliminary approval of the authority prior to July 1, 2008, the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage existing on January 1, 2007.*** In addition to the applicable base hourly wage calculated above, the eligible company shall provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage; however, if the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage, the eligible company may qualify under this section if it provides the employees hired by the eligible company as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the applicable base hourly wage through increased hourly wages combined with employee benefits;
- (5) No economic development project which will result in the replacement of a manufacturing or agribusiness facility existing within the Commonwealth shall be approved by the authority; however, the authority may approve an economic development project that:
 - (a) Rehabilitates a manufacturing or agribusiness facility:
 1. Which has not been in operation for a period of ninety (90) or more consecutive days; or
 2. For which the current occupant of the facility has published a notice of closure so long as the eligible company intending to acquire the facility is not an affiliate of the current occupant; or
 3. To which the title is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;
 - (b) Replaces a manufacturing or agribusiness facility existing in the Commonwealth:
 1. To which the title shall have been taken under the exercise of the power of eminent domain, or to which the title shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
 2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
 - (c) Replaces an existing manufacturing or agribusiness facility located in the same county that cannot be expanded due to the unavailability of real estate at or adjacent to the manufacturing or agribusiness

facility to be replaced. Any economic development project satisfying the requirements of this subsection shall be eligible only for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing or agribusiness facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority that results in a lease abandonment or lease termination by the eligible company without the consent of the lessor.

- (6) With respect to each eligible company making an application to the authority for inducements, and with respect to these economic development projects described in the application which do not involve an expansion, the authority shall make inquiries and request materials of the applicant, including but not limited to written evidence that except for the receipt of inducements authorized by KRS 154.28-015 to 154.28-090 and KRS 141.400, the eligible company will not locate its economic development project within the Commonwealth. Upon the review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project.
- (7) After a diligent review of the relevant materials and completion of its inquiries, the authority, by resolution of its board of directors, may designate an eligible company to be an approved company.
- (8) All meetings of the board of directors of the authority shall be held in accordance with KRS 61.805 to 61.850. The board of directors of the authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

Section 6. KRS 154.48-020 is amended to read as follows:

- (1) The authority may establish standards for the determination and preliminary approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.
- (2) The criteria for preliminary approval of eligible companies and environmental stewardship projects shall include but not be limited to the need for the inducements, the eligible costs to be expended by the eligible company, and the number of employees whose jobs are to be created or retained as a result of the project.
- (3) Each eligible company making an application to the authority for the inducement shall, in a manner acceptable to the authority, describe the nature of the product to be manufactured as a result of the project, identify the eligible costs associated with the project, identify the time schedule of the proposed project, set out alternatives that are available to the eligible company, identify the influence this incentive had on the company's decision to locate the project in the Commonwealth, and provide any additional information relating to the project as the authority may require.
- (4) The project shall have eligible costs of at least five million dollars (\$5,000,000).
- (5)
 - (a) Within six (6) months after the activation date, the approved company shall compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created or retained with base hourly wages equal to either:
 1. Seventy-five percent (75%) of the average hourly wage for the Commonwealth; or
 2. Seventy-five percent (75%) of the average hourly wage for the county in which the project is to be undertaken.
 - (b) If the base hourly wage calculated in paragraph (a)1. or (a)2. of this subsection is less than one hundred fifty percent (150%) of the federal minimum wage, then the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage. ***However, for projects receiving preliminary approval of the authority prior to July 1, 2008, the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage existing on January 1, 2007.*** In addition to the applicable base hourly wage calculated above, the eligible company shall provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage; however, if the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage, the eligible company may qualify under this section if it provides the employees hired by the eligible company as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the applicable base hourly wage through increased hourly wages combined with employee benefits.

- (6) After a review of relevant materials and completion of inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorize a conditional undertaking of the project pursuant to a memorandum of agreement negotiated between the eligible company and the authority.
- (7) The preliminarily approved company shall, in a manner acceptable to the authority and at certain times as the authority may require, provide documentation relating to the eligible costs expended or obligated in connection with the project. The authority shall review the preliminarily approved company's progress in connection with the project to determine if the conditions set forth in the memorandum of agreement have been met.
- (8) After a review of the documentation relating to the preliminarily approved company's compliance under the memorandum of agreement, the authority, by resolution, may give its final approval to the preliminarily approved company's application for a project and may grant to the preliminarily approved company the status of an approved company.
- (9) All meetings of the authority shall be held in accordance with KRS 61.805 to 61.850. The authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

Approved March 22, 2007.

CHAPTER 70

(SB 134)

AN ACT relating to cigarettes.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 8 of this Act:

- (1) *"Cigarette" means any roll for smoking, whether made wholly or in part of tobacco or any other substance, irrespective of size or shape, and whether or not the tobacco or substance is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco;*
- (2) *"Manufacturer" means:*
 - (a) *Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer;*
 - (b) *The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or*
 - (c) *Any entity that becomes a successor of an entity described in paragraphs (a) and (b) of this subsection;*
- (3) *"Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. The program shall ensure that the testing repeatability remains within the required repeatability values stated in paragraph (f) of subsection (1) of Section 2 of this Act for all test trials used to certify cigarettes in accordance with Sections 1 to 8 of this Act;*
- (4) *"Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent (95%) of the time;*
- (5) *"Retailer" means any person who sells to a consumer or to any person for any purpose other than resale;*
- (6) *"Sale" means:*
 - (a) *Any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor; and*

- (b) *The giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money;*
- (7) *"Sell" means an act of selling, or an offer or agreement to sell; and*
- (8) *"Wholesale dealer" means:*
 - (a) *Any person who sells cigarettes or tobacco products to retailers or other persons for purposes of resale; and*
 - (b) *Any person who acts as a "nonresident wholesale," "resident wholesaler," or "unclassified acquirer" as defined in KRS 138.130, and who is authorized by the Department of Revenue to purchase and affix tax stamps on packages of cigarettes.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (7) of this section, no cigarettes shall be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless the cigarettes have been tested in accordance with the test method and meet the performance standards specified in this section, and a written certification has been filed by the manufacturer with the state fire marshal in accordance with Section 3 of this Act, and the cigarettes have been marked in accordance with Section 4 of this Act.*
 - (a) *Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM) standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."*
 - (b) *Testing shall be conducted on ten (10) layers of filter paper.*
 - (c) *No more than twenty-five percent (25%) of the cigarettes tested in a test trial in accordance with this section shall exhibit full-length burns. Forty (40) replicate tests shall comprise a complete test trial for each cigarette tested.*
 - (d) *The performance standard required by this section shall only be applied to a complete test trial.*
 - (e) *Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization (ISO), or other comparable accreditation standard required by the state fire marshal.*
 - (f) *Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure to determine the repeatability of the testing results. The repeatability value shall be no greater than nineteen one-hundredths (0.19).*
 - (g) *This section does not require additional testing if cigarettes are tested consistent with Sections 1 to 8 of this Act for any other purpose.*
 - (h) *Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this section.*
- (2)
 - (a) *Each cigarette listed in a certification submitted pursuant to Section 3 of this Act that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two (2) nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen (15) millimeters from the lighting end of the cigarette.*
 - (b) *For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least fifteen (15) millimeters from the lighting end and ten (10) millimeters from the filter end of the tobacco column, or ten (10) millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.*
- (3)
 - (a) *A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in paragraph (a) of subsection (1) of this section shall propose a test method and performance standard for the cigarette to the state fire marshal. Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in paragraph (c) of subsection (1) of this section, the manufacturer may employ a test method and performance standard to certify the cigarette pursuant to Section 3 of this Act.*

- (b) *If the state fire marshal determines the existence of other cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in Sections 1 to 8 of this Act, then the state fire marshal may authorize the manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the state fire marshal demonstrates a reasonable basis why the alternative test should not be accepted under Sections 1 to 8 of this Act. All other applicable requirements of this section shall apply to the manufacturer.*
- (4) (a) *Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three (3) years, and shall make copies of the reports available to the state fire marshal and the Attorney General upon written request.*
(b) *Any manufacturer who fails to make copies of the reports available within sixty (60) days of receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each day after the sixtieth day that the manufacturer does not make these copies available.*
- (5) *The state fire marshal may adopt a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in paragraph (c) of subsection (1) of this section.*
- (6) *The state fire marshal shall review the effectiveness of this section and shall report every three (3) years to the General Assembly the fire marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations shall be submitted no later than October 1 of each three (3) year period.*
- (7) *The requirements of this section shall not prohibit a wholesale dealer or retailer from selling its existing inventory of cigarettes on or after the effective date of this Act if the wholesale dealer or retailer can establish that state tax stamps were affixed to the cigarettes prior to the effective date of this Act, and if the wholesale dealer or retailer can establish that the inventory was purchased prior to the effective date of this Act in comparable quantity to the inventory purchased during the same period of the prior year.*
- (8) *The implementation and substance of the New York Fire Safety Standards for Cigarettes shall be the persuasive authority in the implementation of Sections 1 to 8 of this Act.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

- (1) *Each manufacturer shall submit to the state fire marshal a written certification attesting that:*
 - (a) *Each cigarette listed in the certification has been tested in accordance with Section 2 of this Act; and*
 - (b) *Each cigarette listed in the certification meets the performance standard set forth under paragraph (c) of subsection (1) of Section 2 of this Act.*
- (2) *Each cigarette listed in the certification shall be described with the following information:*
 - (a) *Brand or trade name on the package;*
 - (b) *Style, such as light or ultra light;*
 - (c) *Length in millimeters;*
 - (d) *Circumference in millimeters;*
 - (e) *Flavor, such as menthol or chocolate, if applicable;*
 - (f) *Filter or nonfilter;*
 - (g) *Package description, such as soft pack or box;*
 - (h) *Marking approved in accordance with Section 4 of this Act;*
 - (i) *The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test; and*
 - (j) *The date that the testing occurred.*

- (3) *The certifications shall be made available to the Attorney General for purposes consistent with Sections 1 to 8 of this Act and the Department of Revenue for the purposes of ensuring compliance with this section.*
- (4) *Each cigarette certified under this section shall be recertified every three (3) years.*
- (5) *For cigarettes certified in compliance with this section, a manufacturer shall pay to the state fire marshal a fee of one thousand dollars (\$1,000) per brand family. "Brand family" shall have the same meaning as in KRS 131.604.*
- (6) *The "Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund" is established in the Finance and Administration Cabinet for use by the state fire marshal solely for processing, testing, enforcement, and oversight activities set out in Sections 1 to 8 of this Act. The fund shall consist of certification fees required under subsection (5) of this section, and any other moneys made available for such purpose from any source. Moneys credited to the fund may be invested until needed. All interest earned in the fund shall be retained in the fund. Notwithstanding KRS 45.229, moneys in the fund shall not lapse, but shall carry forward at the end of the fiscal year.*
- (7) *If a manufacturer has certified a cigarette pursuant to this section, and afterward makes any change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by Sections 1 to 8 of this Act, that cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in paragraph (a) of subsection (1) of Section 2 of this Act and maintains records of that retesting as required by Section 2 of this Act. Any altered cigarette which does not meet the performance standard set forth in paragraph (c) of subsection (1) of Section 2 of this Act shall not be sold in this state.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

A manufacturer shall place on each individual package of cigarettes the letters "FSC" or "FS" which signify "Fire Standards Compliance," indicating compliance with the fire safety performance standard set forth in paragraph (c) of subsection (1) of Section 2 of this Act. The letters shall appear in eight (8) point type and be permanently printed, stamped, engraved, or embossed on the package at or near the UPC Code, if present.

SECTION 5. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

- (1) *A manufacturer, wholesale dealer, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of Section 2 of this Act, for the first offense shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per each sale of the cigarettes and, for a subsequent offense, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per each sale of the cigarettes, except that in no case shall the penalty against the person or entity exceed one hundred thousand dollars (\$100,000) for each thirty (30) day period.*
- (2) *A retailer who knowingly sells cigarettes in violation of Section 2 of this Act shall:*
 - (a) *For the first offense be liable for a civil penalty not to exceed five hundred dollars (\$500) and, for a subsequent offense, be liable for a civil penalty not to exceed two thousand dollars (\$2,000) per each sale or offer for sale of cigarettes, if the total number of cigarettes sold or offered for sale in the sale does not exceed one thousand (1,000) cigarettes; or*
 - (b) *For the first offense be liable for a civil penalty not to exceed one thousand dollars (\$1,000) and, for a subsequent offense, be liable for a civil penalty not to exceed five thousand dollars (\$5,000) per each sale or offer for sale of the cigarettes, if the total number of cigarettes sold or offered for sale in the sale exceeds one thousand (1,000) cigarettes, except that the penalty against any retailer shall not exceed twenty-five thousand dollars (\$25,000) during a thirty (30) day period.*
- (3) *In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section 3 of this Act shall for the first offense be liable for a civil penalty not to exceed seventy-five thousand dollars (\$75,000) and, for a subsequent offense, be liable for a civil penalty not to exceed two hundred fifty thousand dollars (\$250,000) for each false certification.*
- (4) *Any other person violating any provision of Sections 1 to 8 of this Act shall be liable for a civil penalty for a first offense not to exceed one thousand dollars (\$1,000) and, for a subsequent offense, be liable for a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.*

- (5) *Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by Section 2 of this Act shall be subject to forfeiture in accordance with the provisions of KRS 138.165. Before the destruction of any cigarette seized pursuant to KRS 138.165, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.*
- (6) *In addition to any other remedy provided by law, the state fire marshal or Attorney General may file an action in Circuit Court for a violation of Sections 1 to 8 of this Act, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of Sections 1 to 8 of this Act, including enforcement costs relating to the specific violation and attorney's fees. Each violation of Sections 1 to 8 of this Act or of administrative regulations promulgated under Section 6 of this Act shall constitute a separate civil violation for which the state fire marshal or Attorney General may obtain relief.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

- (1) *The state fire marshal may promulgate administrative regulations if necessary to carry out the purposes of Sections 1 to 8 of this Act in accordance with the provisions of KRS Chapter 13A.*
- (2) *The Department of Revenue in the regular course of conducting inspections of wholesale dealers and retailers, as authorized under the provisions of KRS 138.130 to 138.205, may inspect cigarettes to determine if the cigarettes are marked as required by Section 4 of this Act. If the cigarettes are not marked as required, the Department of Revenue shall notify the state fire marshal.*
- (3)
 - (a) *To enforce provisions of Sections 1 to 8 of this Act, the Attorney General and the state fire marshal are authorized to examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises.*
 - (b) *Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale, is directed and required to give the Attorney General and the state fire marshal the means, facilities, and opportunity for the examinations authorized by this section.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

There is hereby established in the State Treasury a special fund to be known as the "Fire Prevention and Public Safety Fund." The fund shall consist of all moneys recovered as penalties under Section 5 of this Act. The moneys shall be deposited to the credit of the fund and shall, in addition to any other moneys made available for such purpose, be made available to the state fire marshal to support fire safety and prevention programs.

SECTION 8. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

- (1) *Nothing in Sections 1 to 8 of this Act shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of Section 2 of this Act if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons located in this state.*
- (2) *Sections 1 to 8 of this Act shall no longer apply if a federal reduced cigarette ignition propensity standard is adopted and becomes effective.*
- (3) *Notwithstanding any other provision of law, city, county, urban-county, charter county, or consolidated local government units of this state shall neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of Sections 1 to 8 of this Act or with any policy of this state expressed by Sections 1 to 8 of this Act, whether that policy be expressed by inclusion of a provision in Sections 1 to 8 of this Act or by exclusion of that subject from this Act.*

Section 9. This Act takes effect on April 1, 2008.

Approved March 23, 2007.

CHAPTER 71

(HB 69)

AN ACT relating to economic development and declaring an emergency.

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

Section 1. 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 ***or to resume operations in the case of closed facilities as provided in paragraph (b) of subsection (10) of this section;***
- (10) "Eligible company" means any corporation, limited liability company, partnership, limited 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 ***acquired***, 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, *or in the case of closed facilities, intending, raw production of at least three (3)*~~[a base contract for annual delivery of at least four (4)]~~ million tons of coal mined *from the economic revitalization project facility*~~[within the Commonwealth]~~ and employing, *or in the case of closed facilities, intending to employ*, 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 *closed*, 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;
- (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;
- (17) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401; and
- (18) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401.

Section 2. KRS 154.26-080 is amended to read as follows:

- (1) The authority shall establish standards for the determination and approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (2) The criteria for approval of eligible companies and economic revitalization projects shall include but not be limited to the need for the project; the new capital investment in the project that will result in financial stability for the manufacturing or coal mining and processing facility; and the retention or expansion of the greatest number of employees at the manufacturing or coal mining and processing facility.
- (3) With respect to each eligible company making an application to the authority for inducements, and with respect to the project described in the application, the authority shall make inquiries and request materials of the applicant, including but not limited to written evidence that except for a substantial investment in the project, assisted by the inducements authorized by KRS 154.26-015 to 154.26-100, the eligible company will close its manufacturing or coal mining and processing facility, permanently lay off its employees, and cease operations, *or will not resume operations of a closed facility as permitted by subsection (9) of Section 1 of this Act.*
- (4) The eligible company shall, in a manner acceptable to the authority, detail the condition of the facility, including but not limited to financial, efficiency, and productivity matters; explain in detail why the company intends to close the facility *or not resume operations of the facility as permitted by subsection (9) of Section 1 of this Act*; and set out alternatives that are available to the company.
- (5) As a part of its application, an eligible company as described in KRS 154.26-010(10)(b) may request an emergency declaration based upon the urgency of the request and its impact on the local or regional economy.
- (6) A request for an emergency declaration shall be reviewed by the secretary of the Cabinet for Economic Development, the secretary of the Education Cabinet, and the secretary of the Finance and Administration Cabinet and their findings in connection with the emergency declaration shall be delivered to the authority.

- (7) If the emergency declaration is granted in accordance with subsection (6) of this section, the eligible company shall not be subject to the requirements contained in subsection (8), subsection (9), or subsection (11) of this section.
- (8) In accordance with, and after the adoption of a resolution under subsection (10) of this section, the authority shall engage the services of a competent consulting firm or technical resource to analyze the data made available by the company, and to collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the company will close the facility ***or not resume operations of the facility as permitted by subsection (9) of Section 1 of this Act*** absent a substantial investment in the project, assisted by the inducements authorized by KRS 154.26-015 to 154.26-100. The company shall pay the cost of this evaluation.
- (9) The company shall cooperate with the consultant and provide all of the data which could reasonably be required by the consultant to make a fair assessment of the company's intentions to close the facility ***or not resume operations of the facility as permitted by subsection (9) of Section 1 of this Act***.
- (10) After a review of relevant materials and completion of inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily-approved company and authorizing the undertaking of the economic revitalization project.
- (11) The authority shall review the report of the consultant and other information which has been made available to it in order to assist the authority in determining whether the company intends to close the facility for valid reasons ***or whether it intends or is able to resume operations of the facility in accordance with the requirements of subsection (10)(b) of Section 1 of this Act if inducements are granted***. The authority shall determine the potential of the proposed revitalization project to make the facility stable, productive, and competitive in its market.
- (12) After the review of the consultant's report or if an emergency declaration has been issued in accordance with subsection (6) of this section, the authority shall hold a public hearing to solicit public comment from any person, group, or interested party regarding the proposed project.
- (13) After the public hearing, the authority, by resolution, may declare the jobs then existing at the facility to be lost ***or the company unable to resume operations as permitted by subsection (9) of Section 1 of this Act***; may give its final approval to the eligible company's application for a project; and may grant to the eligible company the status of an approved company. The decision reached by the authority shall be final and no appeal shall be granted.
- (14) All meetings of the authority shall be held in accordance with KRS 61.805 to 61.850. The authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

Section 3. Whereas the ability to invoke emergency measures is critical to the preservation and creation of jobs within the Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or its otherwise becoming law.

Approved March 23, 2007.

CHAPTER 72

(HB 383)

AN ACT relating to the diabetes research board.

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

Section 1. KRS 211.738 is amended to read as follows:

- (1) A proposed research project shall be submitted to the board on an application developed by the Cabinet for Health and Family Services in consultation with the board. The submission deadline for the application shall be ***determined by the board***~~[September 30 of each year]~~.
- (2) The board shall review the project proposal for scientific merit and adherence to the research priority established in this section. After reviewing the project proposal's scientific merit and adherence to the research

priority, the board shall determine whether a project proposal shall or shall not be funded. An applicant shall be notified of the board's decision *by a date determined by the board*~~[on the application no later than December 31 of each year]~~.

- (3) A project proposal shall be reviewed for scientific merit as follows:
 - (a) Adequacy of prior research and theory in providing a basis for the research;
 - (b) Adequacy of methods;
 - (c) Adequacy of environment, facilities, equipment, available equipment, and research atmosphere;
 - (d) Qualifications and productivity of the PI and key staff;
 - (e) Time commitments of the PI and key staff;
 - (f) Availability of subjects or patients where relevant;
 - (g) Adequacy of procedures for assessing the effect of interventions on recovery; and
 - (h) Other factors that affect the potential of the applicants to successfully address the research objectives.
- (4) A project shall be reviewed by the board for adherence to research priorities relating to *experimental, clinical, or population-based*~~[in vivo and in vitro]~~ studies~~[on naturally occurring phenomena]~~ that may:
 - (a) *Prevent or delay the development of diabetic disease;*
 - ~~(b)(a)~~ Predict the development of diabetic vascular, neuronal, or musculo-skeletal complications;
 - ~~(c)(b)~~ Define the response of diabetic vascular, neuronal, or musculo-skeletal complications to existing therapies;~~[or]~~
 - ~~(d)(e)~~ Reverse diabetic vascular, neuronal, or musculo-skeletal complications; *or*
 - (e) *Cure diabetic disease.*

Approved March 23, 2007.

CHAPTER 73

(SB 196)

AN ACT relating to permitting for industrial energy facilities.

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

Section 1. KRS 224.01-010 is amended to read as follows:

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

- (1) "Air contaminant" includes smoke, dust, soot, grime, carbon, or any other particulate matter, radioactive matter, noxious acids, fumes, gases, odor, vapor, or any combination thereof;
- (2) "Air contaminant source" means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops, and stores, and heating and power plants and stations, buildings and other structures of all types, including single and multiple family residences, apartments, houses, office buildings, public buildings, hotels, restaurants, schools, hospitals, churches, and other institutional buildings, automobiles, trucks, tractors, buses and other motor vehicles, garages and vending and service locations and stations, railroad locomotives, ships, boats and other waterborne craft, portable fuel-burning equipment, incinerators of all types (indoor and outdoor), refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing;
- (3) "Air pollution" means the presence in the outdoor atmosphere of one (1) or more air contaminants in sufficient quantities and of such characteristics and duration as is or threatens to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the comfortable enjoyment of life or property;

- (4) "Closure" means the time at which a waste treatment, storage, or disposal facility permanently ceases to accept wastes, and includes those actions taken by the owner or operator of the facility to prepare the site for post-closure monitoring and maintenance or to make it suitable for other uses;
- (5) "Commission" means the Environmental Quality Commission;
- (6) "Compost" means solid waste which has undergone biological decomposition of organic matter, been disinfected using composting or similar technologies, been stabilized to a degree which is potentially beneficial to plant growth and which is approved for use or sale as a soil amendment, artificial topsoil, growing medium amendment, or other similar uses;
- (7) "Composting" means the process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can easily and safely be stored, handled, and used in an environmentally acceptable manner:
 - (a) "Composting" may include a process which creates an anaerobic zone within the composting material;
 - (b) "Composting" does not include simple exposure of solid waste under uncontrolled conditions resulting in natural decay;
- (8) "Demonstration" means the initial exhibition of a new technology, process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness;
- (9) "Cabinet" means the Environmental and Public Protection Cabinet;
- (10) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;
- (11) "District" means an air pollution control district as provided for in KRS Chapter 77;
- (12) "Effluent limitations" means any restrictions or prohibitions established under state law which include, but are not limited to, effluent limitations, standards of performance for new sources, and toxic effluent standards on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into waters;
- (13) "Generator" means any person, by site, whose act or process produces waste;
- (14) "Materials recovery facility" means a solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of those materials;
- (15) "Municipal solid waste disposal facility" means any type of waste site or facility where the final deposition of any amount of municipal solid waste occurs, whether or not mixed with or including other waste allowed under Subtitle D of the Federal Resource Conservation and Recovery Act of 1976, as amended, and includes, but is not limited to, incinerators and waste-to-energy facilities that burn municipal solid waste, and contained and residential landfills, but does not include a waste site or facility which is operated exclusively by a solid waste generator on property owned by the solid waste generator which accepts only industrial solid waste from the solid waste generator or industrial solid waste generated at another facility owned and operated by the generator or wholly-owned subsidiary, or a medical waste incinerator which is owned, operated, and located on the property of a hospital or university which is regulated by the cabinet and used for the purpose of treatment, prior to landfill, of medical waste received from the generator exclusively or in combination with medical waste generated by professionals or facilities licensed or regulated or operated by the Commonwealth;
- (16) "Municipal solid waste reduction" means source reduction, waste minimization, reuse, recycling, composting, and materials recovery;
- (17) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;
- (18) "Post-closure monitoring and maintenance" means the routine care, maintenance, and monitoring of a solid waste or hazardous waste treatment, storage, or disposal facility following closure of the facility;

- (19) "Publicly owned treatment works" means any device or system used in the treatment (including recycling and recovery) of municipal sewage or industrial wastes of a liquid nature which is owned by the Commonwealth or a political subdivision of the Commonwealth;
- (20) "Recovered material" means those materials, including but not limited to compost, which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing, but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis;
- (21) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material, but does not mean a solid waste management facility if solid waste generated by a recovered material processing facility is managed pursuant to this chapter and administrative regulations adopted by the cabinet;
- (22) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products, including refuse-derived fuel when processed in accordance with administrative regulations established by the cabinet, but does not include the incineration or combustion of materials for the recovery of energy;
- (23) "Refuse-derived fuel" means a sized, processed fuel product derived from the extensive separation of municipal solid waste, which includes the extraction of recoverable materials for recycling and the removal of nonprocessables such as dirt and gravel prior to processing the balance of the municipal solid waste into the refuse-derived fuel product;
- (24) "Secretary" means the secretary of the Environmental and Public Protection Cabinet;
- (25) "Sewage system" means individually or collectively those constructions or devices used for collecting, pumping, treating, and disposing of liquid or waterborne sewage, industrial wastes, or other wastes;
- (26) "Termination" means the final actions taken by the cabinet as to a solid waste or hazardous waste treatment, storage, or disposal facility when formal responsibilities for post-closure monitoring and maintenance cease;
- (27) "Waste site or facility" means any place where waste is managed, processed, or disposed of by incineration, landfilling, or any other method, but does not include a container located on property where solid waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility, or the combustion of processed waste in a utility boiler;
- (28) "Storage" means the containment of wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such wastes;
- (29) "Transportation" means any off-site movement of waste by any mode, and any loading, unloading, or storage incidental thereto;
- (30) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;
- (31) "Waste" means:
 - (a) "Solid waste" means any garbage, refuse, sludge, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining wastes, coal mining by-products, refuse, and overburden), agricultural operations, and from community activities, but does not include those materials including, but not limited to, sand, soil, rock, gravel, or bridge debris extracted as part of a public road construction project funded wholly or in part with state funds, recovered material, special wastes as designated by KRS 224.50-760, solid or dissolved material in domestic sewage, manure, crops, crop residue, or a combination thereof which are placed on the soil for return to the soil as fertilizers or soil conditioners, or solid or dissolved material in

irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923):

1. "Household solid waste" means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunkhouses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and campgrounds;
 2. "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other service and nonmanufacturing activities, excluding household and industrial solid waste;
 3. "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste or a special waste as designated by KRS 224.50-760, including, but not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment; and
 4. "Municipal solid waste" means household solid waste and commercial solid waste; and
- (b) "Hazardous waste" means any discarded material or material intended to be discarded or substance or combination of such substances intended to be discarded, in any form which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed;
- (32) "Waste management district" means any county or group of counties electing to form under the provisions of KRS Chapter 109 and operate in conformance with the provisions of KRS Chapter 109 and with Section 4006, Resource Conservation and Recovery Act of 1976, as amended (Public Law 94-580);
- (33) "Water" or "waters of the Commonwealth" means and includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction;
- (34) "Water pollution" means the alteration of the physical, thermal, chemical, biological, or radioactive properties of the waters of the Commonwealth in such a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life or marine life, to the use of such waters as present or future sources of public water supply or to the use of such waters for recreational, commercial, industrial, agricultural, or other legitimate purposes;
- (35) "Pollutant" means and includes dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, chemical, biological or radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, industrial, municipal or agricultural waste, and any substance resulting from the development, processing, or recovery of any natural resource which may be discharged into water;
- (36) "NPDES" means National Pollutant Discharge Elimination System;
- (37) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of waste during its transportation from the point of generation to the point of disposal, treatment, or storage;
- (38) "Open dump" means any facility or site for the disposal of solid waste which does not have a valid permit issued by the cabinet or does not meet the environmental performance standards established under regulations promulgated by the cabinet;
- (39) "Solid waste management" means the administration of solid waste activities: collection, storage, transportation, transfer, processing, treatment, and disposal, which shall be in accordance with a cabinet-approved county or multicounty solid waste management plan;

- (40) "Solid waste management area" or "area" means any geographical area established or designated by the cabinet in accordance with the provisions of this chapter;
- (41) "Solid waste management facility" means any facility for collection, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether such facility is associated with facilities generating such wastes or otherwise, but does not include a container located on property where solid waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility which is subject to regulation pursuant to the chapter for control of environmental impacts and to prevent any public nuisance;
- (42) "Hazardous constituent" shall conform to the requirements of the Resource Conservation and Recovery Act (RCRA), as amended;
- (43) "Land disposal" includes but is not limited to any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave;
- (44) "Key personnel" means an officer, partner, director, manager, or shareholder of five percent (5%) or more of stock or financial interest in a corporation, partnership, or association or parent, subsidiary, or affiliate corporation and its officers, directors, or shareholders of five percent (5%) or more of stock or financial interest;
- (45) "Universal collection" means a municipal solid waste collection system which is established by ordinance and approved by the cabinet and requires access for each household or solid waste generator in a county. A commercial or industrial entity which transports or contracts for the transport of the municipal solid waste it generates or which operates a solid waste management facility for its exclusive use may be excluded from participation;
- (46) "Governing body" means a county, a waste management district, an entity created pursuant to the Interlocal Cooperation Act, a taxing district created pursuant to the provisions of KRS 65.180 to 65.192, a special district created pursuant to the provisions of KRS 65.160 to 65.176, or counties acting under contract pursuant to KRS 109.082;
- (47) "Convenience center" means a facility that is manned during operating hours for the collection and subsequent transportation of municipal solid wastes;
- (48) "Transfer facility" means any transportation related facility including loading docks, parking areas, and other similar areas where shipments of solid waste are held or transferred during the normal course of transportation;
- (49) "Collection box" means an unmanned receptacle utilized to collect municipal solid waste;
- (50) "Newsprint" means that class or kind of paper chiefly used for printing newspapers and weighing more than twenty-four and one-half (24 1/2) pounds, but less than thirty-five (35) pounds for five hundred (500) sheets of paper two (2) feet by three (3) feet in size, on rolls that are not less than thirteen (13) inches wide and twenty-eight (28) inches in diameter and having a brightness of less than sixty (60);
- (51) "Postconsumer waste paper" means discarded paper after it has served its intended use by a publisher;
- (52) "Publisher" means a person engaged in the business of publishing newspapers, advertisement flyers, telephone books, and other printed material;~~and~~
- (53) "Recycled content" means the proportion of fiber in newsprint that is derived from postconsumer waste paper;
and
- (54) ***"Industrial energy facility" means a facility that produces transportation fuels, synthetic natural gas, chemicals, or electricity through a gasification process using coal, coal waste, or biomass resources, and costing in excess of seven hundred fifty million dollars (\$750,000,000) at the time of construction .***

Section 2. KRS 224.10-225 is amended to read as follows:

- (1) The secretary of the Environmental and Public Protection Cabinet shall facilitate the permitting of coal-fired electric generation plants ***or industrial energy facilities*** in the Commonwealth by developing procedures for one (1) stop shopping for environmental permits.
- (2) ***Upon request by an applicant for environmental permits for an industrial energy facility, the secretary, in consultation with the applicant, shall establish specific time periods for actions to be taken in the***

consideration of its permit applications. The time periods established shall not exceed those adopted by administrative regulations promulgated pursuant to KRS 224.10-220.

Section 3. KRS 224.10-470 is amended to read as follows:

- (1) Appeals may be taken from all final orders of the Environmental and Public Protection Cabinet. ***Except as provided in subsection (3) of this section***, the appeal shall be taken to the Franklin Circuit Court within thirty (30) days from entry of the final order. The party or parties affected by the final order shall file in the Circuit Court a petition which states fully the grounds upon which a review is sought and assign all errors relied on. The cabinet shall be named respondent, and service shall be had on the secretary. Summons shall issue upon the petition directing the cabinet to send its entire record, properly bound, to the clerk of the Circuit Court after certifying that such record is its entire original record or a true copy thereof, which shall be filed by the clerk of the Circuit Court and such record shall then become official and be considered by the Circuit Court on the review. After the case has been properly docketed in the Circuit Court, any party directly affected by the issues on appeal, may, upon notice to the parties and upon proper showing and in the discretion of the court be permitted to intervene. Upon hearing of the appeal the findings of the cabinet shall be prima facie evidence of the facts found therein. The court shall review the entire record and the findings and final order of the cabinet.
- (2) Appeals to the Court of Appeals from orders of the Circuit Court, shall be taken in the manner provided in the Kentucky Rules of Civil Procedure.
- (3) ***Final orders of the cabinet regarding environmental permits for an industrial energy facility as defined in Section 1 of this Act shall be subject to expedited review by the Circuit Court located in the county where the industrial energy facility is proposed to be located.***

Section 4. KRS 278.700 is amended to read as follows:

As used in KRS 278.700 to 278.716, unless the context requires otherwise:

- (1) "Board" means the Kentucky State Board on Electric Generation and Transmission Siting created in KRS 278.702;
- (2) "Merchant electric generating facility" means, except for a qualifying facility as defined in subsection (7) of this section, an electricity generating plant, together with associated facilities, that:
 - (a) Is capable of operating at a capacity of ten megawatts (10MW) or more; and
 - (b) Sells the electricity it produces in the wholesale market, at rates and charges not regulated by the Public Service Commission;
- (3) "Person" means any individual, corporation, public corporation, political subdivision, governmental agency, municipality, partnership, cooperative association, trust, estate, two (2) or more persons having a joint or common interest, or any other entity, and no portion of KRS 224.10-280, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 shall apply to a utility owned by a municipality unless the utility is a merchant plant as defined in this section;
- (4) "Commence to construct" means physical on-site placement, assembly, or installation of materials or equipment which will make up part of the ultimate structure of the facility. In order to qualify, these activities must take place at the site of the proposed facility or must be site-specific. Activities such as site clearing and excavation work will not satisfy the commence to construct requirements;
- (5) "Nonregulated electric transmission line" means an electric transmission line and related appurtenances for which no certificate of public convenience and necessity is required; which is not operated as an activity regulated by the Public Service Commission; and which is capable of operating at or above sixty-nine thousand (69,000) volts;
- (6) "Residential neighborhood" means a populated area of five (5) or more acres containing at least one (1) residential structure per acre; and
- (7) "Qualifying facility" means a cogeneration facility as defined in 16 U.S.C. sec. 796(18)(b) which does not exceed a capacity of one hundred fifty megawatts (150MW) that is located on site at a manufacturer's plant and that uses steam from the cogeneration facility in its manufacturing process, or ***an industrial energy facility as defined in Section 1 of this Act that does not generate more than one hundred fifty megawatts (150 MW) for sale***~~a facility designed to achieve minimum emissions, built for demonstrating the feasibility of producing~~

~~electricity and hydrogen from coal, whose site has been determined acceptable from an environmental impact perspective in a record of decision published by the United States Department of Energy after January 1, 2006,] and [that] has received all [applicable] local planning and zoning approvals.~~

Approved March 23, 2007.

CHAPTER 74

(HCR 28)

A CONCURRENT RESOLUTION confirming the appointment of Wayne Mattingly to the Kentucky Agricultural Development Board.

WHEREAS, KRS 248.707 requires the Governor to appoint members to the Agricultural Development Board subject to confirmation by the Senate and House of Representatives; and

WHEREAS, on July 12, 2006, by Executive Order 2006-811, the Governor appointed Wayne Mattingly to the Agricultural Development Board for a term expiring July 6, 2010; and

WHEREAS, Wayne Mattingly has been appointed as meeting the requirements of KRS 248.707, being an agricultural lender and who otherwise meets the requirements of KRS 11.160;

NOW, THEREFORE,

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

Section 1. Consent is given to the appointment of Wayne Mattingly to the Agricultural Development Board for a term expiring July 6, 2010.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution and notification of its adoption to Wayne Mattingly, 2835 Pleasant Valley Road, Owensboro, Kentucky 42303 and to the Governor.

Approved March 23, 2007.

CHAPTER 75

(HB 462)

AN ACT relating to economic development.

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

Section 1. 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 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;
- (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, 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; 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 Office of Employment and Training within the Department of Workforce Investment in 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;
- (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; *and*
 - 5. *The legal possession of facilities by an approved company or its affiliate pursuant to a lease having a term equal to or greater than fifteen (15) years with a third party entity, negotiated at arms length, if the facility will be used by the approved company to conduct the approved activity for which the inducement has been granted. An economic development project qualifying under this subparagraph shall only be eligible for credits against equipment and costs related to installation of equipment and for purposes of the tax credits provided under the provisions of KRS 154.22-010 to 154.22-080 only to the extent of twenty thousand dollars*

(\$20,000) per job created by and maintained at the economic development project. Notwithstanding KRS 154.22-050(8) and 154.22-060, an economic development project qualifying under this subparagraph shall be eligible only for the aggregate assessments pursuant to KRS 154.22-070 withheld by the approved company each year and shall not be eligible for credit against Kentucky income tax and limited liability entity tax;

- (b) For purposes of paragraph (a)1. and 2. 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 paragraph (a)1., 2., and 3. 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 paragraph (a)3. **and 5.** 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 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);
- (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;
- (23) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and
- (24) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.

Section 2. 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 KRS 154.22-010;
- (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 Office of Employment and Training within the Department of Workforce Investment in 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;
- (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; **and**
 4. *The legal possession of facilities by an approved company or its affiliate pursuant to a lease having a term equal to or greater than ten (10) years with a third party entity, negotiated at arms length, if the facility will be used by the approved company to conduct the approved activity for which the inducement has been granted. An economic development project qualifying under this subparagraph shall only be eligible for credits against equipment and costs related to installation of equipment and for purposes of the tax credits provided under the provisions of KRS 154.28-010 to 154.28-090 only to the extent of twenty thousand dollars (\$20,000) per job created by and maintained at the economic development project. Notwithstanding KRS 154.28-090, an economic development project qualifying under this subparagraph shall be eligible only for the aggregate assessments pursuant to KRS 154.28-110 withheld by the approved company each year and shall not be eligible for credit against Kentucky income tax and limited liability entity tax;{+}*
- (b) For purposes of paragraph (a)1. and 2. 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 paragraph (a)1., 2., and 3. 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 4.**, 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 ~~twenty{ten}~~ thousand dollars ~~(\$20,000){(\$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, 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;
 - (17) "State agency" shall have the meaning assigned to the term in KRS 56.440(8);
 - (18) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401; and
 - (19) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401.

Approved March 23, 2007.

CHAPTER 76**(HB 78)**

AN ACT relating to peace officer certification.

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

Section 1. KRS 15.400 is amended to read as follows:

- (1) The effective date of KRS 15.380 to 15.404 shall be December 1, 1998. All peace officers employed as of December 1, 1998, shall be deemed to have met all the requirements of KRS 15.380 to 15.404 and shall be granted certified status as long as they:
 - (a) Remain in continuous employment of the agency by which they were employed as of December 1, 1998, **and are employed within sixty (60) days by another law enforcement agency subject to the provisions of KRS 15.380 to 15.404;** or
 - (b) Shall have successfully completed an approved basic training course approved and recognized by the Kentucky Law Enforcement Council pursuant to KRS 15.440(1)(d) when seeking employment with another law enforcement agency.
- (2) Any peace officers employed after December 1, 1998, shall comply with all minimum standards specified in KRS 15.380 to 15.404. Persons newly employed or appointed after December 1, 1998, shall have one (1) year within which to gain certified status or they shall lose their law enforcement powers.
- (3) The Open Records Act notwithstanding, the person's home address, telephone number, date of birth, Social Security number, background investigation, medical examination, psychological examination, and polygraph examination conducted for any person seeking certification pursuant to KRS 15.380 to 15.404 shall not be subject to disclosure.

Section 2. KRS 15.386 is amended to read as follows:

The following certification categories shall exist:

- (1) "Precertification status" means that the officer is currently employed or appointed by an agency and meets or exceeds all those minimum qualifications set forth in KRS 15.382, but has not successfully completed a basic training course, except those officers covered by KRS 15.400. Upon the council's verification that the minimum qualifications have been met, the officer shall have full peace officer powers as authorized under the statute under which he was appointed or employed. If an officer fails to successfully complete a basic training course within one (1) year of employment, his or her enforcement powers shall automatically terminate.
- (2) "Certification status" means that unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has met all training requirements. The officer shall have full peace officer powers as authorized under the statute under which he was appointed or employed.
- (3)
 - (a) "Inactive status" means that unless the certification is in revoked status:
 1. The person has been separated on or after December 1, 1998, from the agency by which he was employed or appointed and has no peace officer powers; or
 2. The person is on military active duty for a period exceeding three hundred sixty-five (365) days.
 - (b) The person may remain on inactive status. A person who is on inactive status and who returns to a peace officer position shall have certification status restored if he or she **meets the requirements of subsection (1) of Section 1 of this Act or** has successfully completed a basic training course approved and recognized by the council, has not committed an act for which his or her certified status may be revoked pursuant to KRS 15.380 to 15.404 and successfully completes in-service training as prescribed by the council, as follows:
 1. No more than forty (40) hours if the person has been on inactive status for a period of less than three (3) years, and the person was not in training deficiency status at the time of separation; or
 2. No more than eighty (80) hours if the person has been on inactive status for a period of three (3) years or more, or the person was in training deficiency status at the time of separation.

- (4) "Training deficiency status" means that unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has failed to meet all in-service training requirements. The officer's enforcement powers shall automatically terminate, and he or she shall not exercise peace officer powers in the Commonwealth until he or she has corrected the in-service training deficiency.
- (5) "Revoked status" means that the officer has no enforcement powers and has been separated from an enforcement agency for any one (1) of the following reasons:
 - (a) Failure to meet or maintain training requirements;
 - (b) Willful falsification of information to obtain or maintain certified status;
 - (c) Certification was the result of an administrative error;
 - (d) Plea of guilty to, conviction of, or entering of an Alford plea to any felony;
 - (e) Prohibition by federal or state law from possessing a firearm.
- (6) "Denied status" means that a person does not meet the requirements to achieve precertification status or certification status.
- (7) The design of a certificate may be changed periodically. When a new certificate is produced, it shall be distributed free of charge to each currently certified peace officer.

Section 3. KRS 15.392 is amended to read as follows:

- (1) Within ten (10) working days from separation from service, the chief executive officer of the employing agency or his designee shall file with the council a summary report that provides the relevant information about the person's separation from service.
- (2) If the person has been separated for any reason justifying revoked or denied status pursuant to KRS 15.386, the council shall revoke the person's certification.
- (3) If the person has been separated for any other reason other than death, or one justifying revoked or denied status pursuant to KRS 15.386; and
 - (a) The person has successfully completed basic training at a school certified or recognized by the council ***or has been granted certification pursuant to subsection (1) of Section 1 of this Act***, the council shall place the certification on inactive status; or
 - (b) The person has not successfully completed basic training at a school certified or recognized by the council ***and fails to meet the requirements of subsection (1) of Section 1 of this Act***, the certification shall lapse.
- (4) If the person has been separated due to death, the certification shall be retired.
- (5) The employing agency's findings of fact and evidentiary conclusions shall be deemed final. The council shall be limited only to revoking the certification.
- (6) The council shall not accept or hear complaints.

Section 4. KRS 15.380 is amended to read as follows:

- (1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:
 - (a) State Police officers, but for the commissioner of the State Police;
 - (b) City, county, and urban-county police officers;
 - (c) Deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);
 - (d) State or public university safety and security officers appointed pursuant to KRS 164.950;
 - (e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;
 - (f) Airport safety and security officers appointed under KRS 183.880;

- (g) Office of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090;
 - (h) Division of Insurance Fraud Investigation investigators appointed under KRS 304.47-040; and
 - (i) County detectives appointed in a county containing a consolidated local government with the power of arrest in the county and the right to execute process statewide in accordance with KRS 69.360.
- (2) The requirements of KRS 15.380 to 15.404 for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Personnel Cabinet for job specifications.
- (3) Additional training in excess of the standards set forth in KRS 15.380 to 15.404 for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.
- (4) The following officers may, upon request of the employing agency, be certified by the council:
- (a) Deputy coroners;
 - (b) Deputy constables;
 - (c) Deputy jailers;
 - (d) Deputy sheriffs under KRS 70.045 and 70.263(3);
 - (e) Officers appointed under KRS 61.360;
 - (f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education;
 - (g) Private security officers;
 - (h) Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080; and
 - (i) Investigators employed by the Office of Charitable Gaming in accordance with KRS 238.510; *and*
 - (j) ***Commonwealth detectives employed under KRS 69.110 and county detectives employed under KRS 69.360.***
- (5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:
- (a) Sheriffs;
 - (b) Coroners;
 - (c) Constables;
 - (d) Jailers;
 - (e) Kentucky Horse Racing Authority security officers employed under KRS 230.240; and
 - (f) Commissioner of the State Police.
- (6) Federal peace officers cannot be certified under KRS 15.380 to 15.404.

Section 5. This Act shall be retroactive to July 1, 2004.

Approved March 23, 2007.

CHAPTER 77

(HB 102)

AN ACT relating to the Kentucky Gas Pipeline Authority.

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

Section 1. KRS 353.750 is amended to read as follows:

As used in KRS 353.750 to 353.776, unless the context requires otherwise:

- (1) "Agreement" means a written contract between the authority and any person or persons, firm, corporation, local government, or public entity providing for or relating to the financing of the construction, reconstruction, improvement, or repair of one (1) or more projects of the authority;
- (2) "Authority" means the Kentucky Gas Pipeline Authority created by KRS 353.752;
- (3) "Bonds" mean revenue bonds, notes, or other obligations issued under the provisions of KRS 353.756, 353.758, or 353.768;
- (4) "Cost" means the expenditures for construction, acquisition, financing charges, interest prior to and during construction, principal and interest on any bonds or notes or obligations issued by the authority, engineering and legal expenses, plans, specifications, cost and revenue estimates, other expenses necessary or incidental to determining the feasibility or practicability of constructing any project, administrative expenses, and such other expenses necessary or incident to the construction of and placing into operation a project, the financing of the construction, and the acquisition of the project;
- (5) "Project" means the construction, reconstruction, improvement, or repair of any gas pipeline or appurtenant facilities, together with all property, rights, easements, and interests which may be acquired by the authority to facilitate the construction, reconstruction, improvement, or repair of any gas pipeline or appurtenant facilities. Except for projects involving repair or replacement, projects shall be limited to areas where no gas pipelines exist or where existing lines have insufficient capacity to transport Kentucky gases to market; and
- (6) "Gas" means natural gas, coalbed or other methane gas, *carbon dioxide gas, crude oil or petroleum products*, or any elements of natural gas or other gas.

Approved March 23, 2007.

CHAPTER 78

(HB 137)

AN ACT relating to petroleum storage tanks and declaring an emergency.

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

Section 1. KRS 224.60-142 is amended to read as follows:

- (1) To be eligible to participate in the fund, the owner of any petroleum storage tank containing motor fuels installed and placed in operation after July 15, 2004, shall register the petroleum storage tank with the cabinet as required by KRS 224.60-105 prior to applying for participation in the financial responsibility account.
- (2) The owner of any petroleum storage tank containing motor fuels currently existing, or removed from the ground after January 1, 1974, shall register the petroleum storage tank containing motor fuels with the cabinet prior to applying to the fund, and shall register the petroleum storage tank containing motor fuels by July 15, ~~2010~~~~[2006]~~. Owners or operators may submit affidavits and applications relevant to current petroleum storage tank accounts through July 15, ~~2010~~~~[2006]~~.

Section 2. KRS 224.60-130 is amended to read as follows:

- (1) The Environmental and Public Protection Cabinet, Department for Environmental Protection, Division of Waste Management, shall:
 - (a) Establish by administrative regulation the policy, guidelines, and procedures to administer the financial responsibility and petroleum storage tank accounts of the petroleum storage tank environmental assurance fund. In adopting administrative regulations to carry out this section, the division may distinguish between types, classes, and ages of petroleum storage tanks. The division may establish a range of amounts to be paid from the fund, or may base payments on methods such as pay for performance, task order, or firm fixed pricing, which are designed to provide incentives for contractors to more tightly control corrective action costs, and shall establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. The criteria may include the certification of individuals, partnerships, and companies. Criteria shall be established to certify laboratories that contract to perform analytical testing related to the underground storage tank

program. Owners and operators shall have all required analytical testing performed by a certified laboratory to be eligible for fund participation. Persons who contract with petroleum storage tank owners or operators shall not be paid more than the amount authorized by the division for reimbursement from the fund for the performance of corrective action. At a minimum, the division shall promulgate administrative regulations that will insure an unobligated balance in the fund adequate to meet financial assurance requirements and corrective action requirements of KRS 224.60-135(2) and (4). If the unobligated balance in the fund is not adequate to meet the requirements of this paragraph, the division shall obligate funds necessary to meet these requirements;

- (b) Establish by administrative regulation the criteria to be met to be eligible to participate in the financial responsibility and petroleum storage tank accounts and to receive reimbursement from these accounts. The division may establish eligibility criteria for the petroleum storage tank account based upon the financial ability of the petroleum storage tank owner or operator. Owners or operators seeking coverage under the petroleum storage tank account shall file for eligibility and for financial assistance with the division ~~on or before January 15, 2008~~. To insure cost effectiveness, the division shall promulgate administrative regulations specifying the circumstances under which prior approval of corrective action costs shall be required for those costs to be eligible for reimbursement from the fund. In promulgating administrative regulations to carry out this section, the division may distinguish between types, classes, and ages of petroleum storage tanks and the degree of compliance of the facility with any administrative regulations of the cabinet promulgated pursuant to KRS 224.60-105 or applicable federal regulations;
- (c) Establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by administrative regulations of the cabinet or the federal regulations applicable to petroleum storage tanks, consistent with the intent of the General Assembly as set forth in KRS 224.60-120(5). The account shall receive four-tenths of one cent (\$0.004) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. To be eligible to use this account to demonstrate compliance with financial responsibility requirements of the cabinet or federal regulations, or to receive reimbursement from this account for taking corrective action and for compensating third parties for bodily injury and property damage, the petroleum storage tank owner or operator shall meet the eligibility requirements established by administrative regulation promulgated by the division;
- (d) Establish a small operator assistance account within the fund which may be used by the division to make or participate in the making of loans, to purchase or participate in the purchase of the loans, which purchase may be from eligible lenders, or to insure loans made by eligible lenders;
- (e) Establish a petroleum storage tank account within the fund to be used to pay the costs of corrective action due to a release from a petroleum storage tank not eligible for reimbursement from the financial responsibility account. Reimbursements of corrective action projects performed under the petroleum storage tank account shall be carried out on or before July 15, 2013. Any corrective action costs incurred after this date shall not be eligible for reimbursement under the petroleum storage tank account. The account shall receive one cent (\$0.01) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. This account shall not be used to compensate third parties for bodily injury and property damage. Within three (3) months after July 15, 2004, the division shall develop a plan to address the payment of claims and completion of corrective action at facilities eligible for reimbursement from this account. The division shall establish a ranking system to be used for the distribution of amounts from this account for the purpose of corrective action. In promulgating administrative regulations to carry out this section, the division shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by a release into the environment from a petroleum storage tank;
- (f) Hear complaints brought before the division regarding the payment of claims from the fund in accordance with KRS 224.10-410 to 224.10-470;
- (g) Establish and maintain necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation;
- (h) Employ, in accordance with the procedures found in KRS 45A.690 to 45A.725 for awarding personal service contracts, a qualified actuary to perform actuarial studies, as directed by the division, for

determining an appropriate reserve in the financial responsibility account and the petroleum storage tank account sufficient to satisfy the obligations in each account for all eligible facilities and to satisfy future liabilities and expenses necessary to operate each account. The division shall, by administrative regulation, set the entry level for participation in the fund;

- (i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-105 to 224.60-160, including reasonable costs of administering the fund, the procurement of legal services, and the procurement of analytical testing services when necessary to confirm the accuracy of analytical testing results obtained by a petroleum storage tank owner or operator. The expenditures shall be paid from the appropriate account;
- (j) Establish a small operators' tank removal account within the fund to reimburse the reasonable cost of tank system removal for small owners and operators. The account shall not be used when an owner or operator is removing the tank with the intention of replacing or upgrading the tank. In promulgating administrative regulations to carry out this paragraph, the division may distinguish among owners and operators based on income, number of tanks, number of facilities, and types and classes of tanks;
- (k) Establish by administrative regulation the policy, guidelines, and procedures to perform financial audits of any petroleum storage tank owner or operator receiving reimbursement from the fund or any entity contracting or subcontracting to provide corrective action services for facilities eligible for fund reimbursement. Financial audits shall be limited to those files, records, computer records, receipts, and other documents related to corrective action performed at a facility where the costs of corrective action have been reimbursed by the fund. Files, records, computer records, receipts, and other documents related to corrective action reimbursed by the fund shall be subject to a financial audit for a period of three (3) years after the date of final reimbursement from the fund. Results of the audits shall be protected from disclosure as allowed by KRS 61.878(1)(c). Financial auditing services may be contracted for or personnel may be employed as needed to implement the requirements of this paragraph;
- (l) Be authorized to enter and inspect any facility intending to seek reimbursement for the cost of corrective action to determine the reasonableness and necessity of the cost of corrective action. The division may collect soil or water samples or require storage tank owners or operators to split samples with the division for analytical testing. Refusal to allow entry and inspection of a facility or refusal to allow the division to collect or split samples shall make the facility ineligible for fund participation;
- (m) Have inspectors on site at all tank system removals. Failure to comply with this provision shall make the facility ineligible for fund participation. A petroleum storage tank owner or operator may request through certified mail that the division schedule an inspector to be present at an upcoming tank removal. If the request is made at least two (2) weeks before the time for the removal and an inspector fails to be present at the time scheduled, the tank removal may proceed without making the facility ineligible for fund participation unless the owner is notified by the division no later than ten (10) days prior to the proposed date that an inspector is not available on the proposed date, in which event a representative of the division shall contact the operator and schedule a new date. If no inspector is present at the rescheduled date, the removal may then proceed without penalty; and
- (n) Establish that the deadline for submission of final reimbursement requests under the petroleum storage tank account is two (2) years after receipt of a no further action letter.

~~[The funding and operations of the small operator assistance account and the small operator's tank removal account shall end on July 15, 2008.]~~

- (2) The division may advise the cabinet on the promulgation of administrative regulations concerning petroleum storage tanks.
- (3) The division may sue and be sued in its own name.
- (4) The division may transfer funds from the petroleum storage tank account to the small operator tank removal account as needed to satisfy the obligations, future liabilities, and expenses necessary to operate that account. The division may transfer funds to the financial responsibility account as needed to maintain within that account sufficient funds to demonstrate financial responsibility and to ensure payment of claims as provided in subsection (1)(c) of this section.

Section 3. KRS 224.60-145 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, there is established a petroleum environmental assurance fee to be paid by dealers on each gallon of gasoline and special fuels received in this state.
- (2) All deductions detailed in KRS 138.240(2) and all credits detailed in KRS 138.358 are exempt from the fee. If a dealer has on file, pursuant to KRS Chapter 138, a statement supporting a claimed exemption, an additional statement shall not be required for claiming exemption from the fee.
- (3) The fee shall be reported and paid to the Department of Revenue at the same time and in the same manner as is required for the reporting and payment of the gasoline and special fuels taxes as provided by law.
- (4) The petroleum environmental assurance fee shall be set at one and four-tenths cent (\$0.014) for each gallon. Four-tenths of a cent (\$0.004) per gallon shall be deposited in the financial responsibility account and one cent (\$0.01) shall be deposited in the petroleum storage tank account.
- (5) Within thirty (30) days of the close of fiscal year 2001-2002 and each fiscal year thereafter, the state budget director shall review the balance of each account to determine if a surplus exists. "Surplus" means funds in excess of the amounts necessary to satisfy the obligations in each account for all eligible facilities, to satisfy future liabilities and expenses necessary to operate each account, and to maintain an appropriate reserve in the financial responsibility account to demonstrate financial responsibility and compensate for third-party claims. The state budget director shall report the determination to the Interim Joint Committee on Appropriations and Revenue. After a determination that a surplus exists, the surplus shall be transferred to a restricted account and retained until appropriated by the General Assembly.
- (6) All provisions of law related to the Department of Revenue's administration and enforcement of the gasoline and special fuels tax and all other powers generally conveyed to the Department of Revenue by the Kentucky Revised Statutes for the assessment and collection of taxes shall apply with regard to the fee levied by KRS 224.60-105 to 224.60-160.
- (7) The Department of Revenue shall refund the fee imposed by KRS 224.60-145(1) to any person who paid the fee provided they are entitled to a refund of motor fuel tax under KRS 138.344 to KRS 138.355 and to any person who paid the fee on transactions exempted under KRS 224.60-145(2).
- (8) Notwithstanding any other provisions of KRS 65.180, 65.182, 68.600 to 68.606, 139.470, 183.165, 224.60-115, 224.60-130, 224.60-137, 224.60-140, 224.60-142, and this section to the contrary, the small operator assistance account and small operator tank removal account established under KRS 224.60-130 shall continue in effect until July 15, ~~2010~~²⁰⁰⁸, and thereafter until all eligible claims related to tanks registered by that date are resolved, and sufficient money shall be allocated to and maintained in that account to assure prompt payment of all eligible claims, and to provide for removal of tanks for eligible owners and operators as directed by this chapter.

Section 4. Whereas owners and operators have been excluded from fund eligibility for petroleum storage tanks registered since July 15, 2006, and this has resulted in a backlog of registrations and, if continued, will have both immediate and long-term negative effects on storage tank owners and operators, and on the environment, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 23, 2007.

CHAPTER 79

(HB 192)

AN ACT relating to cotton.

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

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

As used in Sections 1 to 16 of this Act, unless the context requires otherwise:

- (1) *"Association" means any commission, council, board, or other body;*
- (2) *"Boll weevil" means Anthonomus grandis Boheman in any stage of development;*

- (3) *"Commissioner" means the Commissioner of Agriculture or the Commissioner's designee;*
- (4) *"Cotton" means any cotton plant or cotton plant product upon which the boll weevil is dependent for completion of any portion of its life cycle;*
- (5) *"Cotton grower" means any person who is engaged in and has an economic risk in the business of producing, or causing to be produced, cotton for market;*
- (6) *"Host" means any plant or plant product upon which the boll weevil is dependent for completion of any portion of its life cycle;*
- (7) *"Infested" means actually infested with a boll weevil, or so exposed to infestation that it would be reasonable to believe that an infestation exists; and*
- (8) *"Regulated article" means any article of any character carrying or capable of carrying the boll weevil, including but not limited to cotton plants, seed cotton, other hosts, gin trash, and mechanical cotton pickers.*

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

- (1) *The Commissioner shall carry out programs to destroy and eliminate boll weevils in this state.*
- (2) *The Commissioner may cooperate with any agency of the federal government, any state, any other agency in this state, or any person or group of persons engaged in growing, processing, marketing, or handling cotton in order to carry out the purposes of Sections 1 to 16 of this Act, and may enter into written agreements to carry out those purposes. The agreements may provide for cost-sharing and for division of duties and responsibilities under Sections 1 to 16 of this Act, and may include other provisions generally to carry out the purposes of Sections 1 to 16 of this Act.*

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

- (1) *The Commissioner may enter cotton fields and other premises in order to carry out certain activities, including but not limited to treatment with pesticides and monitoring as may be necessary to carry out Sections 1 to 16 of this Act.*
- (2) *The Commissioner may inspect any fields or premises in this state and any property located on the premises for the purpose of determining whether the property is infested. The inspection and other activities may be conducted at any reasonable hours between sunrise and sunset.*

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

Every person growing cotton in this state shall furnish to the Commissioner, on forms supplied by the Commissioner, information that the Commissioner requires regarding the size and location of all commercial cotton fields and of noncommercial patches of cotton grown as ornamentals or for other purposes.

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

The Commissioner shall promulgate administrative regulations to carry out Sections 1 to 16 of this Act, and may establish monetary penalties for violating Sections 1 to 16 of this Act or for violating administrative regulations promulgated under Sections 1 to 16 of this Act.

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

- (1) *The Commissioner may:*
 - (a) *Designate one (1) or more areas of this state as elimination zones where boll weevil eradication programs will be undertaken;*
 - (b) *Designate areas within the elimination zone where commercial and noncommercial cotton is prohibited from being planted;*
 - (c) *Require all commercial cotton growers within an elimination zone to participate in a boll weevil eradication program; or*
 - (d) *Destroy cotton being grown in prohibited areas of an elimination zone, and assess the grower for the costs incurred for the destruction.*
- (2) *Notice of the designation of an elimination zone shall be given by publication for one (1) day each week for three (3) successive weeks in a newspaper having general circulation in the affected area.*

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

- (1) *The Commissioner may treat with pesticides or destroy volunteer or other noncommercial cotton, and may establish procedures for the purchase and destruction of commercial cotton in elimination zones as designated under Section 6 of this Act.*
- (2) *Except as provided in subsection (3) of this section, no payment shall be made to the owner or lessee for the destruction or injury of any cotton which was planted in an elimination zone if the cotton was planted in violation of any provision of Sections 1 to 16 of this Act or any administrative regulations promulgated under Sections 1 to 16 of this Act.*
- (3) *If cotton that was planted in an elimination zone prior to the notification requirement in Section 6 of this Act is destroyed or injured, the Commissioner shall pay for losses incurred.*
- (4) *The Commissioner may restrict entry by persons, and may restrict the location of honeybee colonies, in any areas of an elimination zone which has been or is to be treated with pesticides.*

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

Any person who, except in compliance with administrative regulations promulgated by the Commissioner, moves any regulated article into this state from any other state which the Commissioner has determined to be infested, shall be guilty of a Class A misdemeanor.

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

No association meeting or activity undertaken to carry out Sections 1 to 16 of this Act and intended to benefit all cotton growers, handlers, or processors shall be deemed or considered illegal or in restraint of trade.

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

- (1) *Any existing association which is fairly representative of the cotton growers of Kentucky may at any time after the effective date of Sections 1 to 16 of this Act make application to the State Board of Agriculture on forms provided by the board for certification and approval for the purpose of conducting a referendum among cotton growers upon the question of levying an assessment upon the cotton growers to offset, in whole or in part, the cost of boll weevil or other cotton pest suppression or eradication programs. The application forms shall include but not be limited to the following:*
 - (a) *Applicant's name and address;*
 - (b) *Date;*
 - (c) *Program to be undertaken for growers;*
 - (d) *Brief statement of how the program is to be implemented;*
 - (e) *Referendum to be conducted on a statewide or areawide basis;*
 - (f) *Proposed effective date of the program;*
 - (g) *Geographic area, by counties, of growers to be affected by the program; and*
 - (h) *Signature of the applicant.*
- (2) *The Commissioner shall publish the application through the medium of the public press in the state within ten (10) days of receipt of the application.*

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

- (1) *Upon being certified by the Commissioner, the association shall be fully authorized and empowered to hold and conduct on the part of the cotton growers a referendum on the question of whether or not an assessment shall be levied upon the growers to offset, in whole or in part, the cost of boll weevil or other cotton pest suppression or eradication programs.*
- (2) *Any assessment levied upon cotton growers shall be based upon the number of acres of cotton planted, and shall not exceed twenty dollars (\$20) per acre.*

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

- (1) *Any referendum conducted under Sections 1 to 16 of this Act may be held either on an areawide or statewide basis, as determined by the duly certified association before the referendum is called. The*

referendum may be participated in by all cotton growers. The Commissioner shall determine any questions of eligibility to vote. In the referendum, individuals eligible for participation shall vote upon the question of whether or not there shall be levied an assessment to offset, in whole or in part, the cost of boll weevil or other cotton pest suppression or eradication programs.

- (2) *Passage of the referendum shall require a two-thirds (2/3) majority of those eligible cotton growers voting.*
- (3) *Upon passage of the referendum, the Commissioner shall determine the amount of the assessment, not to exceed twenty dollars (\$20) per acre, and the period of time for which it is levied.*

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

The manner, conduct, and management of any referendum held under Sections 1 to 16 of this Act shall be under the supervision and direction of the Commissioner, and all expenses in connection with the referendum shall be borne by the association conducting the referendum.

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

- (1) *With respect to any referendum conducted under Sections 1 to 16 of this Act, the Commissioner shall publicly announce through the medium of the public press at least thirty (30) days before the date determined for the referendum, the following information:*
 - (a) *The rules and regulations with respect to the holding of the referendum;*
 - (b) *The area within which the referendum will be conducted;*
 - (c) *The date, hours, and polling places for voting in the referendum;*
 - (d) *The effective date of the assessment, if adopted;*
 - (e) *The basis of the assessment proposed to be collected;*
 - (f) *The means by which the assessment shall be collected if authorized by the growers;*
 - (g) *The general purposes to which any amount shall be applied; and*
 - (h) *How the proceeds from the assessment shall be administered.*
- (2) *Direct written notice shall also be given to each county or area agricultural extension agent in any county covered by the referendum.*

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

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

SECTION 16. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

- (1) *If two-thirds (2/3) of the eligible growers who vote in the referendum, vote in favor of levying and collecting the assessment proposed in the referendum, then the assessment shall be collected in the manner determined and announced by the Commissioner.*
- (2) *If the referendum fails to receive the required number of affirmative votes, the association may, with the consent of the Commissioner, call other referendums.*
- (3) *After the passage of any referendum, upon the petition of the majority of eligible voters, eligible voters may, by subsequent referendums, vote on whether to continue their assessments. All of the requirements for an initial referendum shall be met in subsequent referendums.*

Approved March 23, 2007.

CHAPTER 80

(HB 378)

AN ACT relating to the timing of history and physical examinations.

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

Section 1. KRS 216B.175 is amended to read as follows:

- (1) A physician assistant, credentialed under KRS Chapter 311, when those duties and responsibilities are within the scope of training received in an approved program and within the scope of the supervising physician's practice, or an advanced registered nurse practitioner licensed under KRS Chapter 314, may:
 - (a) Perform a history and physical examination for a patient admitted to an acute care or psychiatric hospital licensed under this chapter; and
 - (b) Order and review continuation of restraints and seclusion as a health care practitioner in accordance with 42 C.F.R. 482.13.
- (2) A history and physical examination shall be performed no more than **thirty (30)**~~seven (7)~~ days before or twenty-four (24) hours after a patient is admitted to an acute care or psychiatric hospital licensed under this chapter.
- (3) The history and physical examination that has been performed in compliance with subsection (2) of this section is transferable to another licensed level of care within the same hospital.
- (4) The Cabinet for Health and Family Services shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish the content of the history and physical examination required by subsection (2) of this section performed in an acute or psychiatric hospital that shall be used by the licensing entity.

Approved March 23, 2007.

CHAPTER 81

(HB 82)

AN ACT relating to crimes and punishments.

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

Section 1. KRS 365.250 is amended to read as follows:

- (1) Every dealer in junk or metals, dealer in secondhand articles, vendor of bottles or rags, or collector of or dealer in articles found in ashes, garbage or other refuse, whether such dealers, collectors or vendors have established places of business or operate a business of an itinerant nature, shall keep a register, which shall contain the name of the persons from whom any **copper metal**, copper wire, or **copper** cable is purchased, whatever may be the condition,~~or~~ length, **or weight** of such **copper metal**, copper wire, or **copper** cable, the residence or place of business of such persons and a full description of each purchase including the quantity by weight thereof. Each of such dealers, collectors or vendors shall permit any peace officer to inspect the register at any reasonable time. **Each of such dealers, collectors or vendors shall make a report containing the information required to be maintained in the register provided in this subsection in person, in writing, or by electronic means within twenty-four (24) hours of the transaction to:**
 - (a) **The sheriff of the county in which the purchase was made and the sheriff of the county in which the business is located; and**
 - (b) **When the purchase was made in a city, county, urban-county, charter county, or consolidated local government, to the police department of the city, urban-county, charter county or consolidated local government in which the purchase was made to the police department of the city, county, urban-county, charter county, or consolidated local government in which the business is located, unless there is no police department in that jurisdiction**~~and shall report to the sheriff of the county in which any purchase is made and to the sheriff of the county in which his business is located all of such~~

~~purchases within twenty-four (24) hours thereafter; the report shall contain all of the information required to be maintained in the register provided for herein].~~

- (2) Failure to maintain the register or to report to the sheriff *and police department* as required in subsection (1) *of this section* shall be prima facie evidence that the person receiving *the copper metal*, copper wire, or *copper* cable not registered or reported, received it knowing it to be stolen in violation of KRS 514.110.

~~[(3) In the event the purchase is made or the business is located in a city of the first or second class the reports required hereby shall be made to the police departments of such cities instead of the respective sheriffs.]~~

Section 2. KRS 365.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 365.015 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days, or both, and each day that the violation continues shall constitute a separate offense.
- (2) Any person who violates any of the provisions of KRS 365.020 to 365.050 shall, for each offense, be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisoned for not more than six (6) months, or both. Any person who, as agent of any person or as director, officer or agent of any corporation assists or aids in a violation of any of such provisions by the person or corporation for which he is director, officer or agent, shall be responsible therefor equally with such person or corporation, and in a prosecution brought by the local Commonwealth attorney against him under this subsection it shall be sufficient to allege and prove the unlawful intent of the person or corporation for whom he acts.
- (3) Any person who violates any of the provisions of KRS 365.100 shall be fined not less than two hundred dollars (\$200) for each offense.
- (4) Any person who violates any of the provisions of KRS 365.110 shall be fined not less than ten dollars (\$10) nor more than fifty dollars (\$50) for each offense.
- (5) Any agent or employee of a corporation or any other person who violates any of the provisions of subsection (2) of KRS 365.220 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense, and each day's continuance of the violation shall constitute a separate offense.
- (6) A conviction of a corporation of violating any of the provisions of KRS 365.210 or 365.220 shall operate to forfeit its charter or right to do business in this state. Proceedings may be instituted by the Commonwealth's attorney in any district in this state to forfeit the charter or right to do business in this state of any corporation violating any of the provisions of KRS 365.210 or 365.220, and to subject the corporation charged, if found guilty, to the penalty imposed in subsection (7) of this section.
- (7) Any company that violates any of the provisions of KRS 365.230 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), and if it is a corporation it shall, upon conviction, forfeit its charter.
- (8) Failure to maintain the register or to make the report to the sheriff *and police department* as required by KRS 365.250 shall be a misdemeanor punishable by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than thirty (30) days, or both, and shall be prima facie evidence that such dealer, collector or vendor received the used *copper metal*, copper wire, or *copper* cable not registered or reported, knowing it to be stolen in violation of KRS 514.110.
- (9) Any person or entity that transacts a transient business as defined in KRS 365.650 without first having obtained a permit in accordance with the provisions of KRS 365.660, 365.665, 365.680 or 365.685 or who knowingly advertises, offers for sale, or sells any goods, wares or merchandise in violation of the provisions of KRS 365.650 to 365.695, is guilty of a misdemeanor and shall, upon conviction, be fined not more than five hundred dollars (\$500) or shall be imprisoned in the county jail for not more than six (6) months, or both.

Approved March 23, 2007.

CHAPTER 82

(HB 83)

AN ACT relating to fiduciaries.

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

Section 1. KRS 395.610 is amended to read as follows:

- (1) Two (2) years after appointment and annually thereafter, unless otherwise provided by law, every fiduciary as defined in KRS 395.001, other than a testamentary trustee or a guardian or conservator of a mentally disabled person, shall render an account of the execution of his trust to the court by which he was appointed, including in the account an itemized statement of receipts and disbursements supported by vouchers accompanying the account and a statement of all investments on hand and changes in investments since the filing of his last account. The settlements, when approved and confirmed by the court, shall be recorded and indexed by the clerk, and the original and the vouchers carefully kept by him in his office. An account shall be rendered by ~~a~~~~the~~ fiduciary, **including a testamentary trustee**, at any other time upon order of the court upon its own motion or that of any person interested in the trust, for good cause shown on affidavit. At the expiration of his trust, the fiduciary shall fully account for and pay over the trust estate to the person or persons entitled thereto. Every such account shall list all unpaid creditors whose claims have been allowed and all creditors whose claims have been disallowed. No account of a fiduciary, except of corporate fiduciaries under the supervision of state or federal banking authorities, shall be approved until there are exhibited to the court, for its examination, the security or securities shown in the account as being in the hands of the fiduciary, or the certificate of a bank having possession thereof or in which they have been deposited for safekeeping, and a certified bank statement showing the funds to the credit of the trust.
- (2) Testamentary trustees and guardians and conservators of mentally disabled persons ~~may~~~~shall not~~ be required to render accountings to the court under the provisions of this section. However, trustees may be required to file accounts pursuant to judicial proceedings under KRS 386.675. Guardians and conservators of mentally disabled persons shall comply with the reporting requirements of KRS Chapter 387.

Approved March 23, 2007.

CHAPTER 83

(HB 94)

AN ACT relating to methamphetamine contamination.

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

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

The General Assembly finds that properties contaminated with hazardous chemical residues created by the manufacture of methamphetamine endanger innocent members of the public due to exposure to these residues where properties are not properly decontaminated prior to the subsequent rental, sale, or use of the properties. Remediation of properties has been frustrated by a lack of comprehensive standards and procedures for decontamination of properties found to have been involved with methamphetamine production. The purpose of this section where law enforcement has found evidence of the manufacture of methamphetamine is to protect the public health, safety, and welfare by providing specific cleanup standards and procedures.

(1) *As used in this section, the following definitions shall apply:*

- (a) *"Inhabitable property" means any building or structure and any related curtilage, water, water system, or sewer system used as a clandestine methamphetamine drug lab that is intended to be primarily occupied by people, including a mobile home, that may be sold, leased, or rented for any length of time. "Inhabitable property" shall not include a hotel, as defined in KRS 219.011;*
- (b) *"Surface material" means any porous or nonporous substance common to the interior of a building or structure, including but not limited to ceilings and walls, window coverings, floor and floor*

coverings, counters, furniture, heating and cooling duct work, and any other surface to which inhabitants of the building or structure may be exposed; and

(c) *"Related hazardous material or hazardous waste" means any hazardous waste as defined in this chapter or hazardous material as defined in KRS 174.405 that is related to the clandestine production of methamphetamine.*

(2) *The decontamination standard for methamphetamine inside inhabitable property is less than or equal to one-tenth of one (0.1) microgram of methamphetamine per one hundred (100) square centimeters of surface material, unless the cabinet promulgates an administrative regulation providing for a different standard. The cabinet may provide for other standards by administrative regulations as follows:*

(a) *Standards for precursors to methamphetamine that are consistent with the standard for methamphetamine or standards for related hazardous material or hazardous waste; and*

(b) *The number and locations of surface material samples to be collected based on the circumstances of the contamination and acceptable testing methods.*

In the absence of an administrative regulation as described in paragraph (b) of this subsection, at least three (3) samples must be collected from the surface material most likely to be contaminated at each property.

(3) (a) *Only contractors certified by the Environmental and Public Protection Cabinet shall be authorized to conduct the decontamination services for inhabitable properties. The cabinet shall maintain a list of vendors and contractors with current certification to provide decontamination services. In order to become a certified contractor, a contractor shall:*

1. *Register with the cabinet;*

2. *Post a surety bond or obtain other financial assurance in the amount of five hundred thousand dollars (\$500,000);*

3. *Provide a certificate issued by an insurance company licensed to do business in Kentucky, certifying that the contractor has a public liability insurance policy in an amount deemed sufficient by the cabinet for any personal or property damages that might occur to third parties arising from the performance of decontamination services for inhabitable properties by the contractor or his or her employees or agents;*

4. *Certify that decontamination will be performed safely, and in accordance with 803 KAR 2:403; and*

5. *Certify that each cleanup conducted meets the decontamination standard required by subsection (2) of this section.*

(b) *Upon registration, the Environmental and Public Protection Cabinet shall either accept or deny the contractor's certification. The cabinet may revoke the certification of any contractor for cause and may collect the forfeited financial assurance of any contractor found to be in violation of this section. Forfeited financial assurance may be used by the cabinet to decontaminate inhabitable properties.*

(c) *The cabinet may promulgate administrative regulations to establish standards and procedures for contractor certification and to establish reasonable fees to implement this section.*

(4) *When a state or local law enforcement agency becomes aware that an inhabitable property has been contaminated by its use as a clandestine methamphetamine drug lab, the agency shall, the day that it becomes aware of the contamination, report it by fax or e-mail to the local health department.*

(5) *Upon receipt of a fax or e-mail referred to in inhabitable property provided by a state or local law enforcement agency under subsection (4) of this section, a local health department shall act to protect the public from health hazards posed by methamphetamine contamination of inhabitable property. To carry out this responsibility, a local health department shall rely on its powers under KRS Chapter 212 to post a notice of methamphetamine contamination on each exterior door of the inhabitable property, except in the case of a multi-family housing unit. In that case, the local health department shall post a notice of methamphetamine contamination on each entrance door to that unit. The notice shall warn the public of the health hazards posed by the methamphetamine contamination of the inhabitable property.*

- (6) *To effect the provisions and promote the purposes of this section, the Environmental and Public Protection Cabinet, the Cabinet for Health and Family Services, and the Justice Cabinet shall integrate their efforts with other state agencies to provide information and training to the public about the health hazards associated with methamphetamine laboratories.*
- (7) *The Environmental and Public Protection Cabinet, the Cabinet for Health and Family Services, and the Justice Cabinet shall pursue funds from the federal government, through grants or any other funding source, to help pay for the cost of assessment and decontamination of inhabitable properties.*

Section 2. KRS 198A.040 is amended to read as follows:

The corporation shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter including, but without limiting the generality of the foregoing, the power:

- (1) To make or participate in the making of insured construction loans to sponsors of land development or residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that construction loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (2) To make or participate in the making of insured mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that mortgage loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (3) To purchase or participate in the purchase of insured mortgage loans made to sponsors of residential housing or to persons of lower and moderate income for residential housing; provided, however, that any such purchase shall be made only upon the determination by the corporation that mortgage loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (4) To make temporary loans from the housing development fund;
- (5) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness;
- (6) To acquire real property, or any interest therein, by purchase, foreclosure, lease, sublease, or otherwise; to own, manage, operate, hold, clear, improve, and rehabilitate such real property; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purpose of the Kentucky Housing Corporation;
- (7) To sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction, land development, mortgage, or temporary loan of any type permitted by this chapter;
- (8) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;
- (9) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract, or agreement of any kind to which the corporation is a party;
- (10) To acquire, establish, operate, lease, and sublease residential housing for persons and families of lower and moderate income and to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing and where no local housing authorities or other organizations exist to fill such need;
- (11) To include in any borrowing such amounts as may be deemed necessary by the corporation to pay financing charges, interest on the obligations for a period not exceeding two (2) years from their date, consultant, advisory, and legal fees and such other expenses as are necessary or incident to such borrowing;
- (12) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes;

- (13) To provide technical and advisory services to sponsors of residential housing and to residents and potential residents thereof, including but not limited to, housing selection and purchase procedures, family budgeting, property use and maintenance, household management, and utilization of community resources;
- (14) To promote research and development in scientific methods of constructing low cost residential housing of high durability;
- (15) To encourage community organizations to participate in residential housing development;
- (16) To make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, or other organization or entity, necessary to accomplish the purposes of this chapter;
- (17) To accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source whatsoever and to agree to, and to comply with, conditions attached thereto;
- (18) To sue and be sued in its own name, plead and be impleaded;
- (19) To maintain an office in the city of Frankfort and at such other place or places as it may determine;
- (20) To adopt an official seal and alter the same at pleasure;
- (21) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;
- (22) To employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the corporation and to fix and pay their compensation from funds available to the corporation therefor, provided that any personal service contracts entered into shall be subject to review by the Government Contract Review Committee of the Legislative Research Commission;
- (23) To invest any funds held in reserve or in sinking fund accounts or any moneys not required for immediate disbursement in obligations guaranteed by the Commonwealth, the United States, or their agencies or instrumentalities; provided, however, that the return on such investments shall not violate any rulings of the Internal Revenue Service regarding the investment of the proceeds of any federally tax exempt bond issue;
- (24) To make or participate in the making of rehabilitation loans to the sponsors or owners of residential housing; provided, however, that any such rehabilitation loan shall be made only upon the determination by the corporation that the rehabilitation loan was not otherwise available wholly or in part from private lenders upon reasonably equivalent terms and conditions;
- (25) To insure or reinsure construction, mortgage, and rehabilitation loans on residential housing; provided, however, that any such insurance, reinsurance, or waiver shall be made only upon the determination by the corporation:
 - (a) That such insurance or reinsurance is not otherwise available wholly or in part from private insurers upon reasonably equivalent terms and conditions; and
 - (b) That such loan is a reasonably sound business investment; and provided further that insurance may be waived only where the corporation finds that the amount of the loan does not exceed eighty-five percent (85%) of the development costs, or eighty-five percent (85%) of the value of the property secured by the mortgage as determined by at least two (2) appraisers who are independent of the sponsors, builders, and developers;
- (26) To make grants from appropriated funds, agency and trust funds, and any other funds from any source available to the corporation, to sponsors, municipalities, local housing authorities, and to owners of residential housing for the development, construction, rehabilitation, or maintenance of residential housing and such facilities related thereto as corporation shall deem important for a proper living environment, all on such terms and conditions as may be deemed appropriate by the corporation;
- (27) To make periodic grants to reduce principal and interest payments on mortgages or rentals payable by persons and families of lower and moderate income; and

- (28) (a) To make a grant to reduce principal and interest payments on a mortgage or a rental payable by a member of a state National Guard or a Reserve component, who names Kentucky as home of record for military purposes, during that member's federal active duty. To qualify for a grant, a member of a state National Guard or a Reserve component shall meet reasonable standards established by the corporation, including having family income equal to or less than two hundred percent (200%) of the state or area median income; and
- (b) To provide a member of a state National Guard or a Reserve component, who names Kentucky as home of record for military purposes, and that member's Kentucky resident spouse with the educational, technical, and ombudsman services that are necessary to maintain a mortgage during that member's federal active duty.
- (29) *To establish a program to assist persons and families of lower and moderate income to help defray the cost of assessment and decontamination services required under Section 1 of this Act. To qualify for the program, a person shall meet reasonable standards established by the corporation. A person shall not be eligible for the program if convicted of a felony or found by the corporation to be responsible for contamination of the relevant property through methamphetamine production.*

The Kentucky Housing Corporation shall be exempt from the regulations of the Office of Insurance and the laws of the Commonwealth relating thereto.

Approved March 23, 2007.

CHAPTER 84

(HB 540)

AN ACT relating to reference cigarettes.

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

Section 1. KRS 138.130 is amended to read as follows:

As used in KRS 138.130 to 138.205, unless the context requires otherwise:

- (1) "Department" means the Department of Revenue.
- (2) "Manufacturer" means any person who manufactures or produces cigarettes, snuff, or other tobacco products within or without this state.
- (3) "Retailer" means any person who sells to a consumer or to any person for any purpose other than resale.
- (4) "Sale at retail" means a sale to any person for any other purpose other than resale.
- (5) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco. *Cigarettes shall not mean reference cigarettes.*
- (6) *"Reference cigarettes" means cigarettes made by a manufacturer specifically for a state public university to be held by the university until sale or transfer to a laboratory, hospital, medical center, institute, college or university, manufacturer, or other institution. A reference cigarette package shall carry a marking labeling the contents as research cigarettes to be used only for tobacco-health research and experimental purposes, which shall not be offered for sale, sold, or distributed to consumers.*
- (7) "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift, offer for sale, advertising for sale, soliciting an order for cigarettes, other tobacco products, or snuff, and distribution in any manner or by any means whatsoever.
- ~~(8)(7)~~ "Tax evidence" means any stamps, metered impressions, or other indicia prescribed by the department by regulation as a means of denoting the payment of tax.
- ~~(9)(8)~~ "Person" means any individual, firm, copartnership, joint venture, association, municipal or private corporation whether organized for profit or not, the Commonwealth of Kentucky or any of its political subdivisions, an estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular.

- ~~(10)~~~~(9)~~ "Resident wholesaler" means any person who purchases at least seventy-five percent (75%) of all cigarettes, other tobacco products, or snuff purchased by the wholesaler directly from the manufacturer on which the tax provided for in KRS 138.130 to 138.205 is unpaid, and who maintains an established place of business in this state where the wholesaler attaches cigarette tax evidence, or receives untaxed cigarettes, other tobacco products, or snuff.
- ~~(11)~~~~(10)~~ "Nonresident wholesaler" means any person who purchases cigarettes, other tobacco products, or snuff directly from the manufacturer and maintains a permanent location or locations outside this state where Kentucky cigarette tax evidence is attached or from where Kentucky cigarette tax is reported and paid.
- ~~(12)~~~~(11)~~ "Sub-jobber" means any person who purchases cigarettes, other tobacco products, or snuff from a wholesaler licensed under KRS 138.195 on which the tax imposed by KRS 138.140 has been paid and makes them available to retailers for resale. No person shall be deemed to make cigarettes, other tobacco products, or snuff available to retailers for resale unless the person certifies and establishes to the satisfaction of the department that firm arrangements have been made to regularly supply at least five (5) retail locations with Kentucky tax-paid cigarettes, other tobacco products, or snuff for resale in the regular course of business.
- ~~(13)~~~~(12)~~ "Vending machine operator" means any person who operates one (1) or more cigarette, other tobacco products, or snuff vending machines.
- ~~(14)~~~~(13)~~ "Transporter" means any person transporting untax-paid cigarettes, other tobacco products, or snuff obtained from any source to any destination within this state, other than cigarettes, other tobacco products, or snuff transported by the manufacturer thereof.
- ~~(15)~~~~(14)~~ "Unclassified acquirer" means any person in this state who acquires cigarettes, other tobacco products, or snuff from any source on which the tax imposed by KRS 138.140 has not been paid, and who is not a person otherwise required to be licensed under the provisions of KRS 138.195.
- ~~(16)~~~~(15)~~ "Other tobacco products" means:
- (a) Cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco;
 - (b) Cavendish, plug and twist tobacco, fine-cut, and other chewing tobacco; or
 - (c) Shorts, dry snuff, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco prepared in a manner to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing or smoking. "Other tobacco products" does not include cigarettes as defined in subsection (5) of this section, *reference cigarettes*, or moist snuff taxed under the provisions of KRS 138.140(5).
- ~~(17)~~~~(16)~~ "Wholesale sale" means a sale made for the purpose of resale in the regular course of business.
- ~~(18)~~~~(17)~~ "Cigarette paper" means paper or a similar material suitable for use by consumers to wrap or roll tobacco into the form of a cigarette.

Section 2. KRS 365.270 is amended to read as follows:

As used in KRS 365.260 to 365.380, unless the context otherwise requires:

- (1) "Person" means and includes any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, the Commonwealth of Kentucky and any municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary, or conservator.
- (2) "Commissioner" means the commissioner of the Department of Revenue of the Commonwealth of Kentucky.
- (3) "Department" means the Department of Revenue.
- (4) "Cigarettes" means and includes any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco.
- (5) "Wholesaler" means any person who sells cigarettes at wholesale or distributes cigarettes to be sold at retail, and includes any manufacturer, distributor, jobber, subjobber as defined in KRS 138.130~~(12)~~~~(11)~~, broker, agent, or other person, whether or not enumerated in this subsection, who sells or distributes cigarettes.

- (6) "Retailer" means and includes any person who sells cigarettes in this state to a consumer or to any person for any purpose other than resale.
- (7) "Sale" or "sell" means any transfer for consideration or gift.
- (8) "Sell at wholesale," "sale at wholesale," and "wholesale sales" means and includes any sale made in the ordinary course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.
- (9) "Sell at retail," "sale at retail," or "retail sales" means and includes any sale for consumption or use made in the ordinary course of trade or usual conduct of the seller's business.
- (10) "Basic cost of cigarettes" means the invoice cost of cigarettes to the wholesaler or retailer, as the case may be, less all trade discounts, except customary cash discounts, plus the full face value of any stamps or any tax which may be required by any cigarette tax act of this state or political subdivision thereof, now in effect or hereafter enacted, if not already included in the invoice cost of the cigarettes to the wholesaler or retailer, as the case may be.
- (11) (a) "Cost to wholesaler" means the basic cost of the cigarettes involved to the wholesaler plus the cost of doing cigarette business by the wholesaler. In determining the cost of doing cigarette business by the wholesaler, the cost of doing business by the wholesaler shall first be determined by applying the standards and methods of accounting regularly employed by him, and includes labor costs, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising. The cost of doing business by the wholesaler shall then be multiplied by the fraction obtained through dividing the wholesaler's cigarette sales for the preceding six (6) months by the wholesaler's total sales for the same period and the product thereof shall be the cost of doing cigarette business.
- (b) In the absence of proof of a lesser or higher cost of doing cigarette business by the wholesaler making the sale, the cost of doing cigarette business by the wholesaler shall be presumed to be two percent (2%) of the basic cost of the cigarettes to the wholesale dealer, plus cartage to the retail outlet, if performed or paid for by the wholesale dealer. Cartage cost, in the absence of proof of a lesser or higher cost, shall be presumed to be three-fourths of one percent (0.75%) of the basic cost of the cigarettes to the wholesaler.
- (12) (a) "Cost to the retailer" means the basic cost of cigarettes involved to the retailer plus the cost of doing cigarette business by the retailer. In determining the cost of doing cigarette business by the retailer, the cost of doing business by the retailer shall first be determined by applying the standards and methods of accounting regularly employed by him and includes labor, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising. The cost of doing business by the retailer shall then be multiplied by the fraction obtained through dividing the retailer's cigarette sales for the preceding six (6) months by the retailer's total sales for the same period and the product thereof shall be the cost of doing cigarette business.
- (b) In the absence of proof of a lesser or higher cost of doing cigarette business by the retailer making the sale, the cost of doing cigarette business by the retailer shall be presumed to be eight percent (8%) of the basic cost of cigarettes to the retailer.

Section 3. This Act takes effect July 1, 2007.

Approved March 23, 2007.

CHAPTER 85

(SB 144)

AN ACT relating to reorganization.

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

Section 1. KRS 6.420 is amended to read as follows:

The Department of *Kentucky* State Police shall furnish adequate protection for the property and facilities of the General Assembly and the Legislative Research Commission, both during and between sessions of the General

Assembly, and shall render such additional security services as may be required by the co-chairmen of the Legislative Research Commission.

Section 2. KRS 7.111 is amended to read as follows:

- (1) The ***Department of*** Kentucky State Police, Department of Corrections, the Department of Juvenile Justice, the Cabinet for Health and Family Services, and the Administrative Office of the Courts shall provide access to their databases and the centralized criminal history record information system and the data contained therein to other criminal justice agencies, including criminal justice statistical analysis centers, and to the Legislative Research Commission. The right of access granted herein shall not include the right to add to, delete, or alter data without permission of the agency holding the data.
- (2) Criminal justice agencies and the Legislative Research Commission shall not make public information on an individual person's criminal history record where such record is protected by state or federal law or regulation.
- (3) The Legislative Research Commission shall have access to information which does not identify an individual person when determined by the director of the Legislative Research Commission to be necessary for a legislative purpose.
- (4) The Legislative Research Commission shall have access to individual persons' criminal history records subject to the following provisions:
 - (a) Access shall not include information on federal offenses or convictions;
 - (b) Access shall not include information on out-of-state convictions; and
 - (c) Requests for the release of the information shall be approved by the Legislative Research Commission by vote at a meeting of the Commission.

Section 3. KRS 11.065 is amended to read as follows:

- (1) The secretaries of the Justice ***and Public Safety*** Cabinet, the Education Cabinet, the Environmental and Public Protection Cabinet, the Transportation Cabinet, the Cabinet for Economic Development, the Cabinet for Health and Family Services, the Finance and Administration Cabinet, the Commerce Cabinet, the Personnel Cabinet, the Governor's Executive Cabinet, the state budget director, the Governor's chief of staff, and the Lieutenant Governor shall constitute the Governor's Executive Cabinet. There shall be a vice chairman appointed by the Governor who shall serve in an advisory capacity to the Executive Cabinet. The Governor shall be the chairman, and the secretary of the Finance and Administration Cabinet shall be a second vice chairman of the Executive Cabinet. The Governor may designate others to serve as vice chairman.
- (2) The cabinet shall meet not less than once every two (2) months and at other times on call of the Governor. The Executive Cabinet shall be a part of the Office of the Governor and shall not constitute a separate department or agency of the state. Members of the cabinet shall be the major assistants to the Governor in the administration of the state government and shall assist the Governor in the proper operation of his office and perform other duties the Governor may require of them.
- (3) The cabinet shall consider matters involving policies and procedures the Governor or any member may place before it. The cabinet shall advise and consult with the Governor on all matters affecting the welfare of the state.

Section 4. KRS 11.160 is amended to read as follows:

- (1) When a statute specifically requires Senate confirmation of an appointment by the Governor or by other appointing authority, the appointment shall be handled in the following manner:
 - (a) All names of persons nominated when the General Assembly is not in session shall be submitted for confirmation no later than the next regular session of the General Assembly. The Governor who makes the appointment, or other appointing authority, shall deliver the name of the nominee to the clerk of the Senate upon appointment or no later than the fifteenth legislative day of the next regular session of the General Assembly. The Governor may submit a nominee for confirmation at any special session that occurs between the date of initial appointment and the next regular session of the General Assembly. If the Governor desires to submit the name of a nominee for confirmation at a special session of the General Assembly, he shall place confirmation of the nominee on the call for special session.

- (b) All names of persons nominated to positions during a regular session of the General Assembly shall be submitted for confirmation at that regular session.

The Governor who makes the appointment, or other appointing authority, shall submit the name of the nominee, together with such accompanying information as may expedite the consideration of the appointment to the clerk of the Senate not more than three (3) legislative days after making the appointment, unless the appointment is made during the last fifteen (15) legislative days, in which case the nominee's name and information shall be submitted not more than one (1) legislative day later.

- (c) For each nominee, the Governor who makes the appointment, or other appointing authority, shall deliver to the clerk of the Senate a letter of appointment. The letter of appointment shall be accompanied by a resume which contains at least the following information:
 1. Complete employment history of the nominee;
 2. Complete educational background of the nominee; and
 3. Current and past employment by or financial relationships with the Commonwealth of Kentucky or any of its political subdivisions held by the nominee and any member of the nominee's immediate family.
 - (d) When a statute requires an interim legislative committee to hold a public hearing on a particular appointment, the Governor who makes the appointment, or other appointing authority, shall deliver the letter of appointment and resume for each nominee to the Legislative Research Commission within seven (7) days after making the appointment.
 - (e) The Legislative Research Commission may utilize the services of its staff or other appropriate persons or organizations to investigate the background of nominees and to verify the information provided. The **Department of Kentucky** State Police shall conduct and provide a criminal record history on a nominee if requested by the Legislative Research Commission.
 - (f) During periods when the General Assembly is not in session, the Governor's or other appointing authority's power of appointment shall not be diminished, and nominees may assume the responsibilities of the position pending confirmation. During that period, they shall be considered for all purposes to have been appointed and to be lawful occupants of the post to which they have been nominated, except that they shall be subject to the confirmation process when the General Assembly is next in regular session or special session called for the purpose of confirming the nominees.
 - (g) If the Governor who makes the appointment, or other appointing authority, fails to submit the name of the nominee or if the Senate declines to consider a nominee, the position shall become vacant as of sine die adjournment of the applicable special or regular session of the General Assembly at which the appointment was to be confirmed. If the Senate declines to confirm the nominee, the position shall become vacant upon the date the Senate declined to confirm.
 - (h) Any person not confirmed by the Senate shall not be reappointed by the Governor, or other appointing authority, to the same position for which confirmation is required for a period of two (2) years from the date the Senate declined to confirm the nomination or the date of sine die adjournment if the Senate declined to consider the nomination.
- (2) When a statute specifically requires Senate and House of Representatives confirmation of an appointment by the Governor or by other appointing authority, the appointment shall be handled in the following manner:
- (a) All names of persons nominated when the General Assembly is not in session shall be submitted for confirmation no later than the next regular session of the General Assembly. The Governor who makes the appointment, or other appointing authority, shall deliver the name of the nominee to the clerk of the House of Representatives no later than the fifteenth legislative day of the next regular session of the General Assembly. The Governor may submit a nominee for confirmation at any special session that occurs between the date of initial appointment and the next regular session of the General Assembly. If the Governor desires to submit the name of a nominee for confirmation at a special session of the General Assembly, he shall place confirmation of the nominee on the call for special session.
 - (b) All names of persons nominated to positions during a regular session of the General Assembly shall be submitted for confirmation at that regular session. The Governor who makes the appointment, or other appointing authority, shall submit the name of the nominee to the clerk of the House of Representatives

not more than three (3) legislative days after making the appointment, unless the appointment is made during the last fifteen (15) legislative days, in which case the nominee's name and information shall be submitted not more than one (1) legislative day later.

- (c) For each nominee, the Governor who makes the appointment, or other appointing authority, shall deliver to the clerk of the House of Representatives a letter of appointment. The letter of appointment shall be accompanied by a resume which contains at least the following information:
 - 1. Complete employment history of the nominee;
 - 2. Complete educational background of the nominee; and
 - 3. Current and past employment by or financial relationships with the Commonwealth of Kentucky or any of its political subdivisions held by the nominee and any member of the nominee's immediate family.
- (d) When a statute requires an interim legislative committee to hold a public hearing on a particular appointment, the Governor who makes the appointment, or other appointing authority, shall deliver the letter of appointment and resume for each nominee to the Legislative Research Commission within seven (7) days after making the appointment.
- (e) The Legislative Research Commission may utilize the services of its staff or other appropriate persons or organizations to investigate the background of nominees and to verify the information provided. The **Department of Kentucky** State Police shall conduct and provide a criminal record history on a nominee if requested by the Legislative Research Commission.
- (f) The confirmation shall originate in the House of Representatives. If the House of Representatives does not confirm an appointment, the Senate shall not consider the appointment.
- (g) When both the Senate and the House of Representatives have confirmed an appointment, the Senate shall notify the House of Representatives of the final approval. The clerk of the House shall then notify the Governor, or other appointing authority, and the appointee in writing of the General Assembly's action.
- (h) During periods when the General Assembly is not in session, the Governor's or other appointing authority's power of appointment shall not be diminished, and nominees may assume the responsibilities of the position pending confirmation. During that period, they shall be considered for all purposes to have been appointed and to be lawful occupants of the post to which they have been nominated, except that they shall be subject to the confirmation process when the General Assembly is next in regular session or special session called for the purpose of confirming the nominees.
- (i) If the Governor who makes the appointment, or other appointing authority, fails to submit the name of the nominee or if the House of Representatives or the Senate declines to consider a nominee, the position shall become vacant as of sine die adjournment of the regular session of the General Assembly at which the appointment was to be confirmed. If the House of Representatives or the Senate declines to confirm the nominee, the position shall become vacant upon the date that a chamber of the General Assembly first declined to confirm.
- (j) Any person not confirmed by the House of Representatives or the Senate shall not be reappointed by the Governor, or other appointing authority, to the same position for which confirmation is required for a period of two (2) years from the date that a chamber of the General Assembly first declined to confirm the nomination, or the date of sine die adjournment if the House of Representatives or the Senate declined to consider the nomination.

Section 5. KRS 11.515 is amended to read as follows:

- (1) There is hereby established a Geographic Information Advisory Council to advise the executive director of the Commonwealth Office of Technology on issues relating to geographic information and geographic information systems.
- (2) The council shall establish and adopt policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.

- (3) The council shall closely coordinate with users of geographic information systems to establish policies and procedures that insure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.
- (4) The Geographic Information Advisory Council shall consist of twenty-four (24) members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.
 - (a) The council shall consist of:
 1. The secretary of the Transportation Cabinet or his designee;
 2. The secretary of the Cabinet for Health and Family Services or his or her designee;
 3. The director of the Kentucky Geological Survey or his designee;
 4. The secretary of the Finance and Administration Cabinet or his designee;
 5. The executive director of the Commonwealth Office of Technology or her or his designee;
 6. The secretary of the Economic Development Cabinet or his designee;
 7. The commissioner of the Department for Local Government or his designee;
 8. The secretary of the Justice *and Public Safety* Cabinet or his designee;
 9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
 10. The adjutant general of the Department of Military Affairs or his designee;
 11. The commissioner of the Department of Education or his designee;
 12. The secretary of the Environmental and Public Protection Cabinet or his designee;
 13. The Commissioner of the Department of Agriculture or his designee;
 14. The secretary of the Commerce Cabinet or his designee;
 15. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;
 16. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky Association of Counties;
 17. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;
 18. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;
 19. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;
 20. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers;
 21. One (1) member appointed by the Governor from a list of three (3) persons submitted by the chairman of the Kentucky Board of Registered Geologists; and
 22. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.
 - (b) The council shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.
- (5) The chair shall be appointed by the Governor. The council may have committees and subcommittees as determined by the council or an executive committee, if an executive committee exists.
- (6) A member of the council shall not:

- (a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that have, a substantial interest in the geographic information industry and is doing business in the Commonwealth;
 - (b) Own, control, or have, directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;
 - (c) Be in any manner connected with any contract or bid for furnishing any governmental body of the Commonwealth with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;
 - (d) Be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, substantial interest in the geographic information industry;
 - (e) Accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise; or
 - (f) Be liable to civil action or any action performed in good faith in the performance of duties as a council member.
- (7) Those council members specified in subsection (4)(a) of this section who serve by virtue of an office shall serve on the council while they hold that office.
- (8) Appointed members of the council shall serve for a term of four (4) years. Vacancies in the membership of the council shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.
- (9) The council shall have no funds of its own, and council members shall not receive compensation of any kind from the council.
- (10) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at council meetings.

Section 6. KRS 11.5163 is amended to read as follows:

- (1) The executive director shall establish and implement a statewide public safety interoperability plan. This plan shall include the development of required architecture and standards that will insure that new or upgraded Commonwealth public safety communications systems will interoperate. The Kentucky Wireless Interoperability Executive Committee shall be responsible for the evaluation and recommendation of all wireless communications architecture, standards, and strategies. The executive director shall provide direction, stewardship, leadership, and general oversight of information technology and information resources. The executive director shall report by September 15 annually to the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection and the Interim Joint Committee on State Government on progress and activity by agencies of the Commonwealth to comply with standards to achieve public safety communications interoperability.
- (2) The Kentucky Wireless Interoperability Executive Committee shall serve as the advisory body for all wireless communications strategies presented by agencies of the Commonwealth and local governments. All state agencies in the Commonwealth shall present all project plans for primary wireless public safety voice or data communications systems for review and recommendation by the committee, and the committee shall forward the plans to the executive director for final approval. Local government entities shall present project plans for primary wireless public safety voice or data communications systems for review and recommendation by the Kentucky Wireless Interoperability Executive Committee.
- (3) The committee shall develop funding and support plans that provide for the maintenance of and technological upgrades to the public safety shared infrastructure, and shall make recommendations to the executive director, the Governor's Office for Policy and Management, and the General Assembly.
- (4) The executive director shall examine the project plans for primary wireless public safety voice or data communications systems of state agencies as required by subsection (2) of this section, and shall determine whether they meet the required architecture and standards for primary wireless public safety voice or data communications systems.

- (5) The Kentucky Wireless Interoperability Executive Committee shall consist of twenty-one (21) members as follows:
- (a) A person knowledgeable in the field of wireless communications appointed by the executive director who shall serve as chair;
 - (b) The executive director of the Office of Infrastructure Services, Commonwealth Office of Technology;
 - (c) The executive director of the Office of the 911 Coordinator;
 - (d) The executive director of Kentucky Educational Television, or the executive director's designee;
 - (e) The chief information officer of the Transportation Cabinet;
 - (f) The chief information officer of the Justice *and Public Safety* Cabinet;
 - (g) The chief information officer of the *Department of* Kentucky State Police;
 - (h) The commissioner of the Department of Fish and Wildlife Resources, or the commissioner's designee;
 - (i) The chief information officer of the Environmental and Public Protection Cabinet;
 - (j) The director of the Division of Emergency Management, Department of Military Affairs;
 - (k) The executive director of the Kentucky Office of Homeland Security;
 - (l) The chief information officer, Department for Public Health, Cabinet for Health and Family Services;
 - (m) A representative from an institution of postsecondary education appointed by the Governor from a list of three (3) names submitted by the president of the Council on Postsecondary Education;
 - (n) The executive director of the Center for Rural Development, or the executive director's designee;
 - (o) A representative from a municipal government to be appointed by the Governor from a list of three (3) names submitted by the Kentucky League of Cities;
 - (p) A representative from a county government to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Counties;
 - (q) A representative from a municipal police department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Chiefs of Police;
 - (r) A representative from a local fire department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Fire Chiefs;
 - (s) A representative from a county sheriff's department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Sheriffs' Association;
 - (t) A representative from a local Emergency Medical Services agency to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Board of Emergency Medical Services; and
 - (u) A representative from a local 911 dispatch center to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Chapter of the National Emergency Number Association/Association of Public Safety Communications Officials.
- (6) Appointed members of the committee shall serve for a two (2) year term. Members who serve by virtue of an office shall serve on the committee while they hold that office.
- (7) The committee shall meet quarterly, or as often as necessary for the conduct of its business. A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at committee meetings.
- (8) The committee shall be attached to the Commonwealth Office of Technology for administrative purposes only. Members shall not be paid, and shall not be reimbursed for travel expenses.
- (9) The Public Safety Working Group is hereby created for the primary purpose of fostering cooperation, planning, and development of the public safety frequency spectrum as regulated by the Federal Communications Commission, including the 700 MHz public safety band. The group shall endeavor to bring about a seamless, coordinated, and integrated public safety communications network for the safe, effective, and efficient protection of life and property. The Public Safety Working Group membership and other working

group memberships deemed necessary shall be appointed by the chair of the Kentucky Wireless Interoperability Executive Committee.

- (10) The committee may establish additional working groups as determined by the committee.

Section 7. KRS 12.020 is amended to read as follows:

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

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

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

II. Program cabinets headed by appointed officers:

1. Justice *and Public Safety* Cabinet:
 - (a) Department of *Kentucky* State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) *Office of Drug Control Policy* ~~[Offices of the Deputy Secretaries]~~.
 - (g) Office of *Legal Services* ~~[General Counsel]~~.
 - (h) *Office of the* ~~[Division of]~~ Kentucky State Medical *Examiner* ~~[Examiners Office]~~.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.

- (k) *Office of Legislative and Intergovernmental Services*~~[Commission on Correction and Community Service]~~.
 - (l) *Office of Management and Administrative Services.*
 - (m) *Office of Public Safety Training.*
 - (n) *Office of Investigations.*
 - (o) *Department of Kentucky Vehicle Enforcement.*
 - (p) *Department for Public Advocacy.*
2. Education Cabinet:
- (a) Office of the Secretary.
 - (b) Office of Legal Services.
 - 1. Client Assistance Program.
 - (c) Office of Communication.
 - (d) Office of Legislative and Intergovernmental Affairs.
 - (e) Office of Budget and Administration.
 - 1. Division of Human Resources.
 - 2. Division of Administrative Services.
 - 3. Division of Technology Services.
 - (f) Board of Directors for the Center for School Safety.
 - (g) Council on Postsecondary Education.
 - 1. Foundation for Adult Education.
 - (h) Department of Education.
 - 1. Kentucky Board of Education.
 - (i) Department for Libraries and Archives.
 - (j) Department of Workforce Investment.
 - 1. Office for the Blind.
 - 2. Office of Vocational Rehabilitation.
 - 3. Office of Career and Technical Education.
 - 4. Office of Employment and Training.
 - (k) Foundation for Workforce Development.
 - (l) Kentucky Office for the Blind State Rehabilitation Council.
 - (m) Kentucky Technical Education Personnel Board.
 - (n) Kentucky Workforce Investment Board.
 - (o) Statewide Council for Vocational Rehabilitation.
 - (p) Statewide Independent Living Council.
 - (q) Unemployment Insurance Commission.
 - (r) Education Professional Standards Board.
 - 1. Division of Educator Preparation.
 - 2. Division of Certification.
 - 3. Division of Professional Learning and Assessment.

4. Division of Legal Services.
- (s) Kentucky Commission on the Deaf and Hard of Hearing.
- (t) Kentucky Educational Television.
- (u) Kentucky Environmental Education Council.
3. Environmental and Public Protection Cabinet:
 - (a) Office of the Secretary.
 1. Office of Legislative and Intergovernmental Affairs.
 2. Office of Communications and Public Outreach.
 3. Office of Regulatory Affairs.
 4. Office of Legal Services.
 5. Office of Administrative and Information Services.
 6. Office of Administrative Hearings.
 7. Office of Inspector General.
 8. Mine Safety Review Commission.
 9. Workers' Compensation Board.
 10. Kentucky State Nature Preserves Commission.
 11. Kentucky Environmental Quality Commission.
 12. Kentucky Occupational Safety and Health Review Commission.
 - (b) Department for Environmental Protection.
 1. Office of the Commissioner.
 2. Division of Air Quality.
 3. Division of Water.
 4. Division of Environmental Services.
 5. Division of Waste Management.
 6. Division of Enforcement.
 7. Division of Compliance Assistance.
 - (c) Department for Natural Resources.
 1. Office of the Commissioner.
 2. Office of Technical and Administrative Support.
 3. Division of Mine Permits.
 4. Division of Mine Reclamation and Enforcement.
 5. Division of Abandoned Mine Lands.
 6. Division of Oil and Gas Conservation.
 7. Office of Mine Safety and Licensing.
 8. Division of Forestry.
 9. Division of Conservation.
 - (d) Department of Public Protection.
 1. Office of the Commissioner.

2. Division of Administrative Services.
3. Crime Victims Compensation Board.
4. Board of Claims.
5. Board of Tax Appeals.
6. Kentucky Boxing and Wrestling Authority.
7. Kentucky Horse Racing Authority.
8. Kentucky Public Service Commission.
9. Office of Alcoholic Beverage Control.
10. Office of Charitable Gaming.
11. Office of Financial Institutions.
12. Office of Housing, Buildings and Construction.
13. Office of Insurance.
- (e) Department of Labor.
 1. Office of the Commissioner.
 2. Office of Occupational Safety and Health.
 3. Office of Labor Management Relations and Mediation.
 4. Office of Workplace Standards.
 5. Office of Workers' Claims.
 6. Workers' Compensation Funding Commission.
 7. Kentucky Labor Management Advisory Council.
 8. Occupational Safety and Health Standards Board.
 9. Prevailing Wage Review Board.
 10. Kentucky Employees Insurance Association.
 11. Apprenticeship and Training Council.
 12. State Labor Relations Board.
 13. Workers' Compensation Advisory Council.
 14. Workers' Compensation Nominating Commission.
 15. Employers' Mutual Insurance Authority.
 16. Division of Administrative Services.
4. Transportation Cabinet:
 - (a) Department of Highways.
 1. Office of Program Planning and Management.
 2. Office of Project Development.
 3. Office of Construction and Operations.
 4. Office of Intermodal Programs.
 5. Highway District Offices One through Twelve.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.

- (d) Department of Aviation.
- (e) Department of Intergovernmental Programs.
 - 1. Office of Transportation Enhancement Programs.
 - 2. Office of Rural and Secondary Roads.
- (f) Office of the Secretary.
 - 1. Office of Legislative and Intergovernmental Affairs.
 - 2. Office of Public Affairs.
 - 3. Office of Transportation Delivery.
 - 4. Office for Business and Occupational Development.
 - 5. Office of Budget and Fiscal Management.
 - 6. Office of Legal Services.
 - 7. Office of Inspector General.
 - 8. Office of the Transportation Operations Center.
 - 9. Office of Personnel Management.
- 5. Cabinet for Economic Development:
 - (a) Office of Administration and Support.
 - (b) Department for New Business Development.
 - (c) Department of Financial Incentives.
 - (d) Department for Existing Business Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
 - (g) Office of Research and Information Technology.
 - (h) Department of Commercialization and Innovation.
 - (i) Office of Legal Services.
 - (j) Commission on Small Business Advocacy.
- 6. Cabinet for Health and Family Services:
 - (a) Department for Public Health.
 - (b) Department for Medicaid Services.
 - (c) Department for Mental Health and Mental Retardation Services.
 - (d) Kentucky Commission for Children with Special Health Care Needs.
 - (e) Office of Health Policy.
 - (f) Office of the Secretary.
 - (g) Office of Legal Services.
 - (h) Office of Inspector General.
 - (i) Office of Legislative and Public Affairs.
 - (j) Department for Community Based Services.
 - (k) Department for Disability Determination Services.
 - (l) Office of the Ombudsman.

- (m) Department for Human Support Services.
 - (n) Kentucky Commission on Community Volunteerism and Service.
 - (o) Office of Fiscal Services.
 - (p) Office of Human Resource Management.
 - (q) Office of Technology.
 - (r) Office of Contract Oversight.
 - (s) Governor's Office of Wellness and Physical Activity.
7. Finance and Administration Cabinet:
- (a) Office of General Counsel.
 - (b) Office of the Controller.
 - (c) Office of Administrative Services.
 - (d) Office of Public Information.
 - (e) Department for Facilities and Support Services.
 - (f) Department of Revenue.
 - (g) Commonwealth Office of Technology.
 - (h) State Property and Buildings Commission.
 - (i) Kentucky Savings Bond Authority.
 - (j) Office of Equal Employment Opportunity and Contract Compliance.
 - (k) County Officials Compensation Board.
 - (l) Kentucky Employees Retirement Systems.
 - (m) Commonwealth Credit Union.
 - (n) State Investment Commission.
 - (o) Kentucky Housing Corporation.
 - (p) Kentucky Local Correctional Facilities Construction Authority.
 - (q) Kentucky Turnpike Authority.
 - (r) Historic Properties Advisory Commission.
 - (s) Kentucky Tobacco Settlement Trust Corporation.
 - (t) State Board for Proprietary Education.
 - (u) Kentucky Higher Education Assistance Authority.
 - (v) Kentucky River Authority.
 - (w) Kentucky Teachers' Retirement System Board of Trustees.
8. Commerce Cabinet:
- (a) Department of Tourism.
 - (1) Division of Tourism Services.
 - (2) Division of Marketing and Advertising.
 - (3) Division of Parks Marketing.
 - (b) Kentucky Department of Parks.
 - (1) Division of Information Technology.

- (2) Division of Personnel and Payroll.
- (3) Division of Financial Operations.
- (4) Division of Facilities Management.
- (5) Division of Project Administration.
- (6) Division of Customer Services.
- (7) Division of Recreation.
- (8) Division of Golf Courses.
- (9) Division of Food Services.
- (10) Division of Rangers.
- (11) Division of Eastern Parks.
- (12) Division of Southern Parks.
- (13) Division of Western Parks.
- (c) Department of Fish and Wildlife Resources.
 - (1) Division of Law Enforcement.
 - (2) Division of Administrative Services.
 - (3) Division of Engineering.
 - (4) Division of Fisheries.
 - (5) Division of Information and Education.
 - (6) Division of Wildlife.
 - (7) Division of Public Affairs.
- (d) Kentucky Horse Park.
 - (1) Division of Support Services.
 - (2) Division of Buildings and Grounds.
 - (3) Division of Operational Services.
- (e) Kentucky State Fair Board.
 - (1) Division of Expositions and Admission.
 - (2) Division of Kentucky Fair and Exposition Center Operations.
 - (3) Division of Commonwealth Convention Center.
 - (4) Division of Public Relations and Media.
 - (5) Division of Administrative Services.
 - (6) Division of Personnel Management and Staff Development.
 - (7) Division of Sales.
 - (8) Division of Security and Traffic Control.
- (f) Office of the Secretary.
- (g) Office of Finance and Administration.
- (h) Office of Legal Affairs.
- (i) Office of Intergovernmental Affairs.
- (j) Office of Human Resources.

- (k) Office of Public Affairs and Constituent Services.
 - (l) Office of Information Technology.
 - (m) Office of the Kentucky Sports Authority.
 - (1) Kentucky Sports Authority Board.
 - (n) Office of Creative Services.
 - (o) Office of Capital Plaza Operations.
 - (p) Office of Energy Policy.
 - (1) Energy Policy Advisory Council.
 - (q) Office of Arts and Cultural Heritage.
 - (r) Kentucky African-American Heritage Commission.
 - (s) Kentucky Foundation for the Arts.
 - (t) Kentucky Humanities Council.
 - (u) Kentucky Heritage Council.
 - (v) Kentucky Arts Council.
 - (w) Kentucky Historical Society.
 - (1) Division of Museums.
 - (2) Division of Oral History and Educational Outreach.
 - (3) Division of Research and Publications.
 - (4) Division of Administration.
 - (x) Kentucky Center for the Arts.
 - (1) Division of Governor's School for the Arts.
 - (y) Kentucky Artisans Center at Berea.
 - (z) Martin Luther King Commission.
 - (aa) Northern Kentucky Convention Center.
 - (ab) Eastern Kentucky Exposition Center.
9. Personnel Cabinet:
- (a) Office of the Secretary.
 - (b) Department for Personnel Administration.
 - (c) Office for Employee Relations.
 - (d) Kentucky Public Employees Deferred Compensation Authority.
 - (e) Office of Administrative Services.
 - (f) Office of Legal Services.
 - (g) Office of Government Training.
 - (h) Department for Employee Insurance.
- III. Other departments headed by appointed officers:
- 1. Department of Military Affairs.
 - 2. Department for Local Government.
 - 3. Kentucky Commission on Human Rights.

4. Kentucky Commission on Women.
5. Department of Veterans' Affairs.
6. Kentucky Commission on Military Affairs.
7. Office of Minority Empowerment.
8. Governor's Council on Wellness and Physical Activity.

Section 8. KRS 12.023 is amended to read as follows:

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

- (1) Department of Military Affairs;
- (2) Department for Local Government;
- (3) Kentucky Commission on Human Rights;
- (4) Kentucky Commission on Women;
- (5) Kentucky Commission on Military Affairs;
- (6) Governor's Scholars Program;
- (7) Agricultural Development Board;
- (8) ~~Kentucky Agency for Substance Abuse Policy;~~
- ~~(9)~~ Kentucky Agricultural Finance Corporation;
- ~~(9)~~~~(10)~~ Office of Minority Empowerment;
- ~~(10)~~~~(11)~~ Office of Homeland Security; and
- ~~(11)~~~~(12)~~ Governor's Council on Wellness and Physical Activity.

Section 9. KRS 12.250 is amended to read as follows:

There are established within state government the following program cabinets:

- (1) Justice *and Public Safety* Cabinet.
- (2) Education Cabinet.
- (3) Environmental and Public Protection Cabinet.
- (4) Transportation Cabinet.
- (5) Cabinet for Economic Development.
- (6) Cabinet for Health and Family Services.
- (7) Finance and Administration Cabinet.
- (8) Commerce Cabinet.
- (9) Personnel Cabinet.

Section 10. KRS 12.330 is repealed, reenacted as a new section of KRS Chapter 15A, and amended to read as follows:

- (1) As used in *Sections 10, 11, and 12 of this Act* ~~[KRS 12.330 to 12.334]~~, "KY-ASAP" means the Kentucky Agency for Substance Abuse Policy.
- (2) The *Office of Drug Control Policy* ~~[Kentucky Agency for Substance Abuse Policy is created and attached for administrative purposes to the Office of the Governor. KY ASAP shall be headed by an executive director with experience in overseeing programs involving tobacco and substance abuse and shall have other staff as necessary to conduct its affairs.]~~
- ~~(3) KY ASAP~~ shall administer an endowment from interest generated through funds appropriated or gifts, donations, or funds received from any source. *The Office of Drug Control Policy* ~~[KY ASAP]~~ may expend

endowment principal, if necessary in its discretion, to carry out the purposes of *Sections 10, 11, and 12 of this Act*~~[KRS 12.330 to 12.334]~~. These expenditures from the endowment principal are hereby appropriated for this purpose.

- (3)~~(4)~~ (a) ***The Office of Drug Control Policy shall oversee the activities specified in Sections 10, 11, and 12 of this Act and provide administrative support to*** the seventeen (17) member KY-ASAP Board, ***which*** is created to oversee the activities of KY-ASAP. Membership of the board shall be appointed by the Governor and shall consist of the following:
1. One (1) member representing the Kentucky Family Resource Youth Services Coalition, or a designee;
 2. One (1) member representing the Kentucky Health Department Association, or a designee;
 3. The secretary of the Cabinet for Health and Family Services, or designee;
 4. The secretary of the Justice ***and Public Safety*** Cabinet, or a designee;
 5. One (1) member representing the Division of Mental Health and Substance Abuse Services within the Department for Mental Health and Mental Retardation Services, Cabinet for Health and Family Services, or a designee;
 6. The commissioner of the Department for Public Health, Cabinet for Health and Family Services, or a designee;
 7. The executive director of the Office of Alcoholic Beverage Control, or a designee;
 8. The commissioner of the Department of Education;
 9. The director of the Administrative Office of the Courts, or a designee;
 10. One (1) member representing the Kentucky Association of Regional Programs, or a designee;
 11. One (1) member representing the Kentucky Heart Association, or a designee;
 12. One (1) member representing the Kentucky Lung Association, or a designee;
 13. One (1) member representing the Kentucky Cancer Society, or a designee;
 14. Two (2) members representing local tobacco addiction and substance abuse advisory and coordination boards; and
 15. Two (2) members representing private community-based organizations, whether for-profit or nonprofit, with experience in programs involving smoking cessation or prevention or alcohol or substance abuse prevention and treatment.
- (b) Members shall serve for a term of four (4) years, may be reappointed, and may serve no more than two (2) consecutive terms. Members shall not be compensated but shall receive reimbursement for expenses incurred while performing board business.
- (c) The board shall meet at least quarterly. A quorum of nine (9) members shall be required for the transaction of business. Meetings shall be held at the call of the chair, or upon the written request of two (2) members to the chair.
- (d) The board shall:
1. Oversee deposits and expenditures from the endowment;
 2. Request, in its discretion, an audit relating to the expenditure of endowment funds;
 3. Receive quarterly reports from the executive director regarding KY-ASAP's activities;
 4. Progress toward development and implementation of the strategic plan;
 5. Recommend to KY-ASAP the most efficient means for using public funds to coordinate, supplement, and support high quality and ongoing programs of all public agencies and private service providers related to smoking cessation and prevention and alcohol and substance abuse prevention and treatment;
 6. Recommend matters for review and analysis by KY-ASAP; and

7. Perform other duties as necessary for the oversight of KY-ASAP.

~~(4)(5)~~ ***The Office of Drug Control Policy and*** KY-ASAP shall promote the implementation of research-based strategies that target Kentucky's youth and adult populations.

~~(5)(6)~~ ***The Office of Drug Control Policy and*** KY-ASAP shall vigorously pursue the philosophy that tobacco in the hands of Kentucky's youth is a drug abuse problem because of the addictive qualities of nicotine, and because tobacco is the most prevalent gateway drug that leads to later and escalated drug and alcohol abuse.

Section 11. KRS 12.332 is repealed, reenacted as a new section of KRS Chapter 15A, and amended to read as follows:

The Office of Drug Control Policy shall be responsible for all matters relating to the research, coordination, and execution of drug control policy and for the management of state and federal grants including but not limited to the prevention and treatment related to substance abuse. By December 31 of each year, the Office of Drug Control Policy shall review, approve, and coordinate all current projects of any substance abuse program which is conducted by or receives funding through agencies of the executive branch. This oversight shall extend to all substance abuse programs which are principally related to the prevention or treatment, or otherwise targeted at the reduction, of substance abuse in the Commonwealth. The Office of Drug Control Policy shall promulgate administrative regulations consistent with enforcing this oversight authority. In addition, the Office of Drug Control Policy and KY-ASAP shall:

- (1) Develop a strategic plan to reduce the prevalence of smoking and drug and alcohol abuse among both the youth and adult populations in Kentucky;
- (2) Monitor the data and issues related to youth alcohol and tobacco access, smoking cessation and prevention, and substance abuse policies, their impact on state and local programs, and their flexibility to adapt to the needs of local communities and service providers;
- (3) Make policy recommendations to be followed to the extent permitted by budgetary restrictions and federal law, by executive branch agencies that work with smoking cessation and prevention and alcohol and substance abuse issues to ensure the greatest efficiency in agencies and to ensure that a consistency in philosophy will be applied to all efforts undertaken by the administration in initiatives related to smoking cessation and prevention and alcohol and substance abuse;
- (4) Identify existing resources in each community that advocate or implement programs for smoking cessation or prevention, or drug and alcohol abuse prevention, education, or treatment;
- (5) Encourage coordination among public and private, state and local, agencies, organizations, and service providers, and monitor related programs;
- (6) Act as the referral source of information, utilizing existing information clearinghouse resources within the Department for Public Health and CHAMPIONS for a Drug Free Kentucky Office, relating to youth tobacco access, smoking cessation and prevention, and substance abuse prevention, cessation, and treatment programs. ***The Office of Drug Control Policy and*** KY-ASAP shall identify gaps in information referral sources;
- (7) Search for grant opportunities for existing programs within the Commonwealth;
- (8) Make recommendations to state and local agencies and local tobacco addiction and substance abuse advisory and coordination boards;
- (9) Observe programs from other states;
- (10) Coordinate services among local and state agencies, including but not limited to the Justice ***and Public Safety*** Cabinet, the Cabinet for Health and Family Services, the Department of Agriculture, the Environmental and Public Protection Cabinet, the Administrative Office of the Courts, and the Education Cabinet;
- (11) Assure the availability of training, technical assistance, and consultation to local service providers for programs funded by the Commonwealth that provide services related to tobacco addiction, smoking cessation or prevention, or alcohol or substance abuse;
- (12) Review existing research on programs related to smoking cessation and prevention and substance abuse prevention and treatment;

- (13) Comply with any federal mandate regarding smoking cessation and prevention and substance abuse, to the extent authorized by state statute;
- (14) Establish a mechanism to coordinate the distribution of funds to support any local prevention, treatment, and education program based on the strategic plan developed in subsection (1) of this section that could encourage smoking cessation and prevention through efficient, effective, and research-based strategies;
- (15) Oversee a school-based initiative that links schools with community-based agencies and health departments to implement School Programs to Prevent Tobacco Use, based upon the model recommended by the Centers for Disease Control and Prevention. To the extent permitted by resources, the initiative shall involve input by and services from each of the family resource and youth services centers, regional prevention centers, and existing school-based antidrug programs;
- (16) Work with community-based organizations to encourage them to work together to establish comprehensive tobacco addiction and substance abuse prevention education programs and carry out the strategic plan developed in this section. These organizations shall be encouraged to partner with district and local health departments and community mental health centers to plan and implement interventions to reach youths before tobacco addiction and substance abuse become a problem in their lives;
- (17) Coordinate media campaigns designed to demonstrate the negative impact of smoking and the increased risk of tobacco addiction, substance abuse, and the development of other disease in children, young people, and adults. To accomplish this objective, KY-ASAP shall work with local media to reach all segments of the community quickly and efficiently;
- (18) Certify to the Governor, *the secretary of the Justice and Public Safety Cabinet*, and the General Assembly during the budget request process established under KRS Chapter 48 the extent to which each entity receiving state funds has cooperated with *the Office of Drug Control Policy and KY-ASAP*, coordinated with community resources, and vigorously pursued the philosophy of *the Office of Drug Control Policy and KY-ASAP*;
- (19) Promulgate, *with the approval of the secretary of the Justice and Public Safety Cabinet*, any administrative regulations necessary to implement *Sections 10, 11, and 12 of this Act* ~~[KRS 12.330 to 12.334]~~; and
- (20) Report *annually* to the Legislative Research Commission and Governor ~~[by October 1, 2000,]~~ regarding the proper organization of state government agencies that will provide the greatest coordination of services, and report semiannually to the Legislative Research Commission and Governor on the *status of the Office of Drug Control Policy and KY-ASAP programs*, ~~[proper organization structure, devising and implementing an accountability system to be designed to ensure efficiency and efficacy of]~~ services, and grants, and on other matters as requested by the Legislative Research Commission and Governor.

Section 12. KRS 12.334 is repealed and reenacted as a new section of KRS Chapter 15A:

- (1) KY-ASAP shall establish in each county a local tobacco addiction and alcohol and substance abuse advisory and coordination board to assist in planning, overseeing, and coordinating the implementation of local programs related to smoking cessation and prevention and alcohol and substance abuse prevention, cessation, and treatment, although a single board may be established for multiple counties to ensure a comprehensive range of services. The board shall assist with the coordination of programs provided by public and private entities. If the existing programs of private service providers are of high quality, KY-ASAP shall concentrate on providing missing elements and support for those providers. The Cabinet for Health and Family Services shall support the communities' efforts.
- (2) KY-ASAP shall consult with community leaders to solicit the names of residents from the community to serve on each advisory and coordination board. KY-ASAP shall request from each board the submission of reasonable reports on the effectiveness, efficiency, and efforts of each local program, including recommendations for increased or decreased funding, and KY-ASAP shall supply information as necessary to the advisory and coordination board to enable it to carry out its functions.
- (3) KY-ASAP shall provide incentives to encourage multicounty advisory and coordination board requests and shall establish a single board to represent all counties making the request. Priority in establishing a board shall be given to existing regional prevention centers or coalitions, community organizations, or local Kentucky Incentives for Prevention (KIP) project coalitions. Membership shall consist of residents from each of the counties.

- (4) Each advisory and coordination board shall develop a long-term community strategy that is designed to reduce the incidence of youth and young adult smoking and tobacco addiction, promote resistance to smoking, reduce the incidence of substance abuse, and promote effective treatment of substance abuse. All county resources, both private and public, for-profit and nonprofit, shall be considered in developing this strategy.
- (a) Employers, local leaders, schools, family resource and youth services centers, health care providers and institutions, economic developers, and other relevant local and regional entities shall be consulted in the development of the strategy.
 - (b) An assessment of needs and available services shall be included in the strategy.

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

- (1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.
- (2) The provisions of this chapter shall not apply to:
 - (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
 - (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
 - (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;
 - (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;
 - (e) Administrative hearings conducted by the legislative and judicial branches of state government;
 - (f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;
 - (g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;
 - (h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;
 - (i) Administrative hearings exempted pursuant to subsection (3) of this section;
 - (j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and
 - (k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.
- (3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:
 - (a) Finance and Administration Cabinet
 - 1. Higher Education Assistance Authority
 - a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410
 - b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33
 - 2. Department of Revenue
 - a. Any licensing and bond revocation hearings conducted under the authority of KRS 138.210 to 138.448 and 234.310 to 234.440

- b. Any license revocation hearings under KRS 131.630 and 138.130 to 138.205
- (b) Cabinet for Health and Family Services
 - 1. Office of Health Policy
 - a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B
 - b. Licensure revocation hearings conducted under authority of KRS Chapter 216B
 - 2. Department for Community Based Services
 - a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630
 - 3. Department for Disability Determination Services
 - a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404
- (c) Justice *and Public Safety* Cabinet
 - 1. Department of *Kentucky* State Police
 - a. *Kentucky* State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16
 - 2. Department of Corrections
 - a. Parole Board hearings conducted under authority of KRS Chapter 439
 - b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197
 - c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197
 - 3. Department of Juvenile Justice
 - a. Supervised placement revocation hearings conducted under KRS Chapter 635
- (d) Environmental and Public Protection Cabinet
 - 1. Department for Natural Resources
 - a. Surface mining hearings conducted under authority of KRS Chapter 350
 - 2. Department for Environmental Protection
 - a. Wild River hearings conducted under authority of KRS Chapter 146
 - b. Water resources hearings conducted under authority of KRS Chapter 151
 - c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223
 - d. Environmental protection hearings conducted under authority of KRS Chapter 224
 - e. Petroleum Storage Tank Environmental Assurance Fund hearings under authority of KRS Chapter 224
 - 3. Office of Workers' Claims
 - a. Workers' compensation hearings conducted under authority of KRS Chapter 342
 - 4. Kentucky Occupational Safety and Health Review Commission
 - a. Occupational safety and health hearings conducted under authority of KRS Chapter 338
 - 5. Department of Public Protection
 - a. Board of Claims
 - i. Liability hearings conducted under authority of KRS Chapter 44
 - b. Public Service Commission

i Utility hearings conducted under authority of KRS Chapters 74, 278, and 279

- (e) Education Cabinet
 - 1. Unemployment Insurance hearings conducted under authority of KRS Chapter 341
 - (f) Secretary of State
 - 1. Registry of Election Finance
 - a. Campaign finance hearings conducted under authority of KRS Chapter 121
 - (g) State universities and colleges
 - 1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164
 - 2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164
 - 3. Campus residency hearings conducted under authority of KRS Chapter 164
 - 4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
 - 5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.
- (4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:
- (a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;
 - (b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or
 - (c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.
- (5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.
- (6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.
- Section 14. KRS 15.243 is amended to read as follows:
- (1) In addition to the other duties and powers of the Attorney General, he shall enforce all of the state's election laws by civil or criminal processes.
 - (2) The Attorney General shall:
 - (a) Devise and administer programs to observe the conduct of elections;
 - (b) Hold public hearings;

- (c) Establish a toll-free telephone service for the purpose of receiving reports of election law violations. The service shall be operated during regular business hours throughout the year and during the hours which any poll in the state is open on the day of any primary, special election or regular election;
 - (d) Initiate investigations or investigate alleged violations of election laws at the request of a registered voter or on his own motion;
 - (e) Issue subpoenas for the production of any books, papers, correspondence, memoranda or other records, and compel the attendance of witnesses that he deems relevant to the purposes of any investigation;
 - (f) Present evidence of alleged violations to a grand jury; and
 - (g) File appropriate complaints in any court of competent jurisdiction.
- (3) (a) The Attorney General shall be required to begin an independent inquiry for any potential irregularities that may have occurred in each election in not fewer than five percent (5%) of Kentucky's counties, to be selected at random in a public process, within twenty (20) days following each primary or regular election. No county shall be subject to inquiry under this subsection in two (2) consecutive elections.
 - (b) The Attorney General shall report his findings to the grand jury of each county involved and to the chief circuit judge for the circuit in which the county is located.
- (4) When the Registry of Election Finance concludes there is probable cause to believe a violation of election laws has occurred, it shall forward the matter to the Attorney General for prosecution. In the event the Attorney General or local prosecutor fails to prosecute the matter in a timely fashion, the registry's attorney may petition the Circuit Court to be appointed as a special prosecutor. Upon such motion timely filed, for good cause shown, the court shall enter an order to that effect.
 - (5) When requested by the Attorney General, all state and local agencies and officials, including the Auditor of Public Accounts, Commonwealth's attorneys, county attorneys, Registry of Election Finance, **Department of Kentucky** State Police, sheriffs' departments and local police shall give all possible assistance to the Attorney General in the performance of his duties.

Section 15. KRS 15.247 is amended to read as follows:

- (1) The Attorney General shall develop and administer a program for the protection of crime victims and witnesses and their immediate families.
- (2) Within the limits of the administrative regulations, guidelines, and appropriations for this purpose, the program shall provide funding to the **Department of Kentucky** State Police or to a sheriff's office or city or county police department agreeing to provide protection to crime victims and witnesses and their families.
- (3) Any Commonwealth's attorney or county attorney may apply to the Attorney General for funding for protection of crime victims, witnesses, and their families.
- (4) No protective service shall be rendered to the same person for more than six (6) months.
- (5) Protective services funded by this program shall be limited to:
 - (a) Physical protection of the person;
 - (b) Physical security measures for the person's residence, vehicle, workplace, or combination thereof; or
 - (c) Short-term relocation.
- (6) The Attorney General shall promulgate administrative regulations under KRS Chapter 13A for the operation of the program.
- (7) Nothing in this statute shall be construed to create a cause of action for money damages against the state, a county, a municipality, or any of their agencies, public officials, or employees.
- (8) No court shall order a law enforcement agency to protect crime victim witnesses or their immediate families.
- (9) No record that may lead to the identity of a person seeking or given protection under this section shall be an open record. This protection shall extend even to the question of whether such a record exists.

Section 16. KRS 15.280 is amended to read as follows:

- (1) A Criminal Justice Statistical Analysis Center is hereby created as part of the Kentucky Justice *and Public Safety* Cabinet.
- (2) The Criminal Justice Statistical Analysis Center shall provide its reports and recommendations to the Governor and the General Assembly through the Kentucky Criminal Justice Council.
- (3) The Criminal Justice Statistical Analysis Center shall:
 - (a) Improve the quality and usefulness of criminal justice statistics and research results that are disseminated to citizens, public agencies, and private agencies in Kentucky; ~~by:~~
 1. ~~Conducting periodic needs assessments of criminal justice agencies;~~
 2. ~~Analyzing offender based tracking data;~~
 3. ~~Conducting specialized studies that use statistical data which are presently maintained by state and local agencies in Kentucky; and~~
 4. ~~Supporting the implementation of a statewide Unified Criminal Justice Information System through the Unified Criminal Justice Information System Committee of the Kentucky Criminal Justice Council.~~
 - (b) ~~Publish~~ *Publish* ~~increase the ability of statistical users to translate data and research results into practice by:~~
 1. ~~Publishing~~ research results and statistical data that are requested by criminal justice agencies; ~~and~~
 2. ~~Conducting conferences and workshops on the use of statistical information;~~
 - (c) Improve the relationship between citizens and criminal justice agencies of Kentucky by conducting citizen surveys of the needs, attitudes, and behavior relating to crime and justice; and
 - (d) Strengthen the relationship between ~~the~~ Kentucky criminal justice agencies and the ~~National~~ Bureau of Justice Statistics, United States Department of Justice, by:
 1. Providing justice statistics to the Bureau of Justice Statistics as required; and
 2. Serving as a clearinghouse for Bureau of Justice Statistics materials.
- (4) The Kentucky Justice *and Public Safety* Cabinet may expend any federal grants or federal funds provided for carrying out the functions and authority as assigned in this section. Further, the Kentucky Justice *and Public Safety* Cabinet ~~through the Kentucky Criminal Justice Council~~ may employ such employees as may be necessary to fulfill the duties, responsibilities, and functions assigned by this section.

Section 17. KRS 15.310 is amended to read as follows:

As used in KRS 15.315 to 15.510, 15.990, and 15.992, unless the context otherwise requires:

- (1) "Basic training course" means the peace officer basic training course provided by the Department of Criminal Justice Training or a course approved and recognized by the Kentucky Law Enforcement Council;
- (2) "Certified peace officer" means a peace officer who is certified under KRS 15.380 to 15.402;
- (3) "Certification" means the act by the council of issuing certification to a peace officer who successfully completes the training requirements pursuant to KRS 15.404 and the requirements set forth within this chapter;
- (4) "Council" means the Kentucky Law Enforcement Council established by KRS 15.315 to 15.510, 15.990, and 15.992;
- (5) "Department" means the Department of Criminal Justice Training of the Justice *and Public Safety* Cabinet;
- (6) "Law enforcement officer" means a member of a lawfully organized police unit or police force of county, city or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as sheriffs, sworn deputy sheriffs, campus security officers, law enforcement support personnel, public airport authority security officers, other public and federal peace officers responsible for law enforcement, and special local peace officers licensed pursuant to KRS 61.360;
- (7) "Peace officer" means a person defined in KRS 446.010;

- (8) "Secretary" means the secretary of the Justice *and Public Safety* Cabinet; and
- (9) "Validated job task analysis" means the minimum entry level qualifications and training requirements for peace officers in the Commonwealth based upon an actual survey and study of police officer duties and responsibilities conducted by an entity recognized by the Kentucky Law Enforcement Council as being competent to conduct such a study.

Section 18. KRS 15.315 is amended to read as follows:

The Kentucky Law Enforcement Council is hereby established as an independent administrative body of state government to be made up as follows:

- (1) The Attorney General of Kentucky, the commissioner of the Department of *Kentucky* State Police, directors of the Southern Police Institute of the University of Louisville, the dean of the College of *Justice and Safety*~~Law Enforcement~~ of Eastern Kentucky University, the president of the Kentucky Peace Officers Association, the president of the Kentucky Association of Chiefs of Police, the Kentucky president of the Fraternal Order of Police, and the president of the Kentucky Sheriffs' Association shall be ex officio members of the council, as full voting members of the council by reason of their office. The *United States attorneys for the Eastern and Western Districts of Kentucky may confer and designate a local law enforcement liaison who*~~[Kentucky special agent in charge of the Federal Bureau of Investigation]~~ shall serve on the council in an advisory capacity only without voting privileges. Each ex officio member may designate in writing a person to represent him or her and to vote on his or her behalf.
- (2) *Twelve (12)*~~Eleven (11)~~ members shall be appointed by the Governor for terms of four (4) years from the following classifications: a city manager or mayor, *a county judge/executive*, three (3) Kentucky sheriffs, a member of the Kentucky State Bar Association, five (5) chiefs of police, and a citizen of Kentucky not coming within the foregoing classifications. No person shall serve beyond the time he or she holds the office or employment by reason of which he or she was initially eligible for appointment. Vacancies shall be filled in the same manner as the original appointment and the successor shall be appointed for the unexpired term. Any member may be appointed for additional terms.
- (3) No member may serve on the council with the dual membership as the representative of more than one (1) of the aforementioned groups or the holder of more than one (1) of the aforementioned positions. In the event that an existing member of the council assumes a position entitling him to serve on the council in another capacity, the Governor shall appoint an additional member from the group concerned to prevent dual membership.
- (4) Membership on the council does not constitute a public office, and no member shall be disqualified from holding public office by reason of his membership.

Section 19. KRS 15.330 is amended to read as follows:

- (1) The council is vested with the following functions and powers:
 - (a) To prescribe standards for the approval and continuation of approval of schools at which law enforcement and telecommunications training courses required under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.992 shall be conducted, including but not limited to minimum standards for facilities, faculty, curriculum, and hours of attendance related thereto;
 - (b) To prescribe minimum qualifications for instructors at such schools, except that institutions of higher education shall be exempt from council requirements;
 - (c) To prescribe qualifications for attendance and conditions for expulsion from such schools;
 - (d) To prescribe minimum standards and qualifications for voluntary career development programs for certified peace officers and telecommunicators, including minimum standards for experience, education, and training, and to issue certificates to those meeting the minimum standards;
 - (e) To approve, to issue, and to revoke for cause certificates to schools and instructors as having met requirements under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.992;
 - (f) To approve law enforcement officers, telecommunicators, and other persons as having met requirements under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.992;
 - (g) To inspect and evaluate schools at any time and to require of schools, instructors, and persons approved or to be approved under the provisions of KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.992, any information or documents;

- (h) To promulgate reasonable rules and administrative regulations in accordance with KRS Chapter 13A to accomplish the purposes of KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.992;
 - (i) To monitor the Law Enforcement Foundation Program as prescribed in KRS 15.410 to 15.510;
 - (j) To adopt bylaws for the conduct of its business not otherwise provided for; and
 - (k) The council shall have the authority to certify police officers as set out in this chapter.
- (2) The provisions of KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.992 do not apply to the Department of **Kentucky** State Police except for the certification requirement established by this chapter.

Section 20. KRS 15.380 is amended to read as follows:

- (1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:
- (a) **Department of Kentucky** State Police officers, but for the commissioner of the **Department of Kentucky** State Police;
 - (b) City, county, and urban-county police officers;
 - (c) Deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);
 - (d) State or public university safety and security officers appointed pursuant to KRS 164.950;
 - (e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;
 - (f) Airport safety and security officers appointed under KRS 183.880;
 - (g) Office of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090;
 - (h) Division of Insurance Fraud Investigation investigators appointed under KRS 304.47-040; and
 - (i) County detectives appointed in a county containing a consolidated local government with the power of arrest in the county and the right to execute process statewide in accordance with KRS 69.360.
- (2) The requirements of KRS 15.380 to 15.404 for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Personnel Cabinet for job specifications.
- (3) Additional training in excess of the standards set forth in KRS 15.380 to 15.404 for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.
- (4) The following officers may, upon request of the employing agency, be certified by the council:
- (a) Deputy coroners;
 - (b) Deputy constables;
 - (c) Deputy jailers;
 - (d) Deputy sheriffs under KRS 70.045 and 70.263(3);
 - (e) Officers appointed under KRS 61.360;
 - (f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education;
 - (g) Private security officers;
 - (h) Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080; and
 - (i) Investigators employed by the Office of Charitable Gaming in accordance with KRS 238.510.

- (5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:
 - (a) Sheriffs;
 - (b) Coroners;
 - (c) Constables;
 - (d) Jailers;
 - (e) Kentucky Horse Racing Authority security officers employed under KRS 230.240; and
 - (f) Commissioner of the *Department of Kentucky* State Police.
- (6) Federal peace officers cannot be certified under KRS 15.380 to 15.404.

Section 21. KRS 15.398 is amended to read as follows:

The following Kentucky Revised Statutes and any administrative regulations promulgated thereunder affecting those peace officers required to be certified pursuant to KRS 15.380 to 15.404 shall not be superseded by the provisions of KRS 15.380 to 15.404, and in all instances the provisions of all statutes specified below shall prevail:

- (1) KRS Chapter 16, relating to *Department of Kentucky* State Police Officers;
- (2) KRS Chapter 70, relating to sheriffs, and deputy sheriffs;
- (3) KRS Chapter 78, relating to county police;
- (4) KRS Chapters 15 and 95, except for KRS 95.955, relating to city and urban-county police;
- (5) KRS Chapter 183, relating to airport safety and security officers;
- (6) KRS Chapter 164, relating to State Universities and Colleges; Regional Education and Archaeology officers;
- (7) KRS Chapter 18A, relating to all state peace officers;
- (8) KRS 241.090, relating to Office of Alcoholic Beverage Control field representatives and investigators;
- (9) KRS 304.47-040, relating to Division of Insurance Fraud Investigators; and
- (10) Any other statutes affecting peace officers not specifically cited herein.

Section 22. KRS 15.420 is amended to read as follows:

As used in KRS 15.410 to 15.510, unless the context otherwise requires:

- (1) "Local unit of government" means any city or county, combination of cities and counties, state or public university, or county sheriff's office of the Commonwealth.
- (2) "Police officer" means a full-time member of a lawfully organized police department of county, urban-county or city government, a sheriff or full-time deputy sheriff, including any providing court security or appointed under KRS 70.030, or a state or public university police officer who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but does not include *Department of Kentucky* State Police, any sheriff who earns the maximum constitutional salary for this office, any special deputy sheriff appointed under KRS 70.045, any constable, deputy constable, district detective, deputy district detective, special local peace officer, auxiliary police officer or any other peace officer not specifically authorized in KRS 15.410 to 15.510.
- (3) "Council" means the Kentucky Law Enforcement Council.
- (4) "Validated job task analysis" means the core job description which describes the minimum entry level requirements, qualifications, and training requirements for peace officers in the Commonwealth which is based upon an actual survey and study of police officer duties and responsibilities conducted by an entity recognized by the Kentucky Law Enforcement Council as being competent to conduct such a study.

Section 23. KRS 15.440 is amended to read as follows:

- (1) Each local unit of government which meets the following requirements shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund:
 - (a) Employs one (1) or more police officers;

- (b) Pays every police officer at least the minimum federal wage;
 - (c) Maintains the minimum educational requirement of a high school degree, or its equivalent as determined by the Kentucky Law Enforcement Council, for employment of police officers on or after July 1, 1972, and for all sheriffs appointed or elected on or after July 15, 1998, and all deputy sheriffs, and state or public university police officers employed after July 15, 1998; provided, however, that all police officers employed prior to July 1, 1972, shall be deemed to have met the requirements of this subsection, and that all sheriffs serving in office on July 15, 1998, all deputy sheriffs, and state or public university police, employed prior to July 15, 1998 shall be deemed to have met the requirements of this subsection;
 - (d) Requires all police officers employed on or after July 1, 1972, and all sheriffs appointed or elected on or after July 15, 1998, and deputy sheriffs, and state or public university police officers employed on or after January 1, 1998, to successfully complete a basic training course of at least six hundred forty (640) hours' duration within one (1) year of the date of employment at a school certified or recognized by the Kentucky Law Enforcement Council. All sheriffs serving in office on July 15, 1998, all deputy sheriffs, and state or public university police, employed prior to January 1, 1998, shall be deemed to have met the requirements of this subsection. The council may, by the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A, set the number of hours for basic training at a number higher than six hundred forty (640) hours based upon a training curriculum approved by the Kentucky Law Enforcement Council as determined by a validated job task analysis;
 - (e) Requires all police officers, whether originally employed before or after July 1, 1972, and all sheriffs appointed or elected before, on, or after July 15, 1998, and all deputy sheriffs and state or public police officers employed before, on, or after July 15, 1998, to successfully complete each calendar year an in-service training course, appropriate to the officer's rank and responsibility and the size and location of his department, of at least forty (40) hours' duration at a school certified or recognized by the Kentucky Law Enforcement Council. This requirement shall be waived for the period of time that a peace officer is serving on active duty in the United States Armed Forces. This waiver shall be retroactive for peace officers from the date of September 11, 2001;
 - (f) Requires compliance with all provisions of law applicable to local police, state or public university police, or sheriffs and their deputies, including transmission of data to the centralized criminal history record information system as required by KRS 17.150;~~and~~
 - (g) Requires compliance with all reasonable rules and regulations, appropriate to the size and location of the local police department, state or public university police department, or sheriff's office, issued by the Justice *and Public Safety* Cabinet to facilitate the administration of the fund and further the purposes of KRS 15.410 to 15.510; *and*
 - (h) *Possesses a written policy and procedures manual related to domestic violence for law enforcement agencies that meets the standards set forth by, and has been approved by, the Justice and Public Safety Cabinet. The policy shall comply with the provisions of KRS 403.715 to 403.785. The policy shall include purpose statements; definitions; supervisory responsibilities; procedures for twenty-four (24) hour access to protective orders; procedures for enforcement of court orders or relief when protective orders are violated; procedures for timely and contemporaneous reporting of adult abuse and domestic violence to the Cabinet for Families and Children, Department for Community Based Services; victim rights, assistance and service responsibilities; and duties related to timely completion of records.*
- (2) No local unit of government which meets the criteria of this section shall be eligible to continue sharing in the distribution of funds from the Law Enforcement Foundation Program fund unless the local police department, state or public university police department, or sheriff's office actually begins and continues to comply with the requirements of this section; provided, further, that no local unit shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund until the local police department, state or public university police department, or sheriff's office has substantially complied with subsection (1)(f) and (g) of this section.
- (3) A sheriff's office shall not lose eligibility to share in the distribution of funds from the Law Enforcement Foundation Program fund if the sheriff does not participate in the Law Enforcement Foundation Program fund.

Section 24. KRS 15.450 is amended to read as follows:

- (1) The secretary or his *or her* designated representative shall administer the Law Enforcement Foundation Program fund pursuant to the provisions of KRS 15.410 to 15.510 and may promulgate any administrative regulations as, in his *or her* judgment, are necessary to carry out his responsibilities under KRS 15.410 to 15.510. Administrative hearings promulgated by administrative regulation under authority of this section shall be conducted in accordance with KRS Chapter 13B.
- (2) The secretary or his designated representative shall determine which local units of government are eligible to share in the Law Enforcement Foundation Program fund and may withhold or terminate payments to any local unit that does not comply with the requirements of KRS 15.410 to 15.510 or the administrative regulations issued by the Justice *and Public Safety* Cabinet under KRS 15.410 to 15.510.
- (3) The Justice *and Public Safety* Cabinet shall, from moneys appropriated and accruing to the fund as provided under KRS 15.430, receive reimbursement for the salaries and other costs of administering the fund, including, but not limited to, council operations and expenses. The amount to be reimbursed for any given year shall be determined by the council and shall not exceed five percent (5%) of the total amount of funds for that year.
- (4) The Justice *and Public Safety* Cabinet shall furnish periodically to the council any reports as may be deemed reasonably necessary.

Section 25. KRS 15.470 is amended to read as follows:

Law Enforcement Foundation Program funds made available to local units shall be received, held, and expended in accordance with the provisions of KRS 15.410 to 15.510, including the *administrative*~~[rules and]~~ regulations *promulgated*~~[issued]~~ by the Justice *and Public Safety* Cabinet, and the following specific restrictions:

- (1) Funds provided shall be used only as a cash salary supplement to police officers, for payments to the defined benefit pension plan to which the officer belongs to cover employer retirement costs on the cash salary supplement, and for administrative costs as provided in KRS 15.450;
- (2) Funds provided shall be used only to compensate police officers who have complied with KRS 15.440(1)(c), (d), and (e).
- (3) Each police officer shall be entitled to receive the state supplement which his qualifications brought to the local unit;
- (4) Funds provided shall not be used to supplant existing salaries or as a substitute for normal salary increases periodically due to police officers.

Section 26. KRS 15.480 is amended to read as follows:

The Finance and Administration Cabinet, on the certification of the Justice *and Public Safety* Cabinet, shall draw warrants as specified hereinafter on the State Treasurer for the amount of the Law Enforcement Foundation Program fund due each participating local unit. Checks shall be issued by the State Treasurer and transmitted to the Justice *and Public Safety* Cabinet for distribution to the proper officials of participating local units which have complied with the provisions of KRS 15.410 to 15.510 and the *administrative*~~[rules and]~~ regulations of the Justice *and Public Safety* Cabinet. Beginning July 1, 1972, and on the first day of each month thereafter, the share of each eligible and participating local unit of government shall be distributed from the Law Enforcement Foundation Program fund.

Section 27. KRS 15.490 is amended to read as follows:

- (1) Each participating local unit of government shall submit reports to the Justice *and Public Safety* Cabinet on March 31, June 30, September 30 and December 31 of each year containing information relative to number, rank, education, training, and compensation of police officers employed by it and the disposition made of any state or other funds received pursuant to KRS 15.410 to 15.510. Nothing in this section shall prohibit the Justice *and Public Safety* Cabinet from requiring additional information or reports from participating local units of government;
- (2) Local units of government shall include the additional compensation paid to each police officer from the Law Enforcement Foundation Program fund as a part of the officer's salary in determining all payroll deductions.

Section 28. KRS 15.500 is amended to read as follows:

- (1) If funds appropriated by the General Assembly and otherwise made available to the Law Enforcement Foundation Program fund are insufficient to provide the amount of money required by KRS 15.460, the Justice

and Public Safety Cabinet shall establish the rate of assistance to be paid to eligible local units of governments.

- (2) Funds unexpended by the Justice *and Public Safety* Cabinet at the close of the fiscal year for which the funds were appropriated and otherwise made available to this fund pursuant to KRS 15.430, 42.190 and 136.392, shall not lapse as provided by KRS 45.229, but shall be carried forward into the following fiscal year, and shall be used solely for the purposes specified in KRS 15.410 to 15.500.

Section 29. KRS 15.510 is amended to read as follows:

An appeal may be taken from any decision of the Justice *and Public Safety* Cabinet to withhold or terminate payment from the Law Enforcement Foundation Program fund to any local unit of government. Appeals shall be taken to the Circuit Court of the county where the controversy originates.

Section 30. KRS 15.540 is amended to read as follows:

- (1) An agency hiring a telecommunicator after July 15, 2006, shall certify to the Department of Criminal Justice Training before admission to the telecommunicator training program that the telecommunicator:
 - (a) Is a citizen of the United States and has reached the age of majority;
 - (b) Is a high school graduate or has received a general equivalency diploma (GED);
 - (c) Has not been convicted of a felony or other crimes involving moral turpitude as determined by submission of each applicant's fingerprints to the information systems section of the Department of *Kentucky* State Police and to the Federal Bureau of Investigation identification division, and by such other investigations as required by the hiring agency;
 - (d) Has taken a psychological suitability screening administered or approved by the Kentucky Law Enforcement Council to determine his or her suitability to perform the duties of a telecommunicator. Any agency that administers its own suitability screening shall certify the results to the department;
 - (e) Has taken a polygraph examination administered or approved by the Kentucky Law Enforcement Council to determine his or her suitability to perform the duties of a telecommunicator. Any agency that administers its own polygraph examination shall certify the results to the department; and
 - (f) Has passed a drug screening administered or approved by the Kentucky Law Enforcement Council. A person shall be deemed to have passed a drug screening if the results are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own screening shall certify passing results to the department.
- (2) Provisions of the Open Records Act, KRS 61.870 to 61.884, to the contrary notwithstanding, the applicant's home address, telephone number, date of birth, Social Security number, and results of any background investigation, psychological suitability screening, and polygraph examination conducted under this section shall not be subject to disclosure.

Section 31. KRS 15.565 is amended to read as follows:

- (1) No person shall receive an official appointment on a permanent basis as a CJIS telecommunicator unless that person has previously been awarded a certificate by the Kentucky Law Enforcement Council attesting to that person's satisfactory completion of the CJIS telecommunications academy. Every person who is employed after July 15, 2006, as a CJIS telecommunicator shall forfeit his or her position as such unless, within six (6) months from the date of employment, that person satisfactorily completes the CJIS telecommunications academy and is awarded a certificate attesting thereto. The council shall waive the training requirements listed in this section and award a CJIS telecommunicator certificate for all CJIS telecommunicators who are serving on July 15, 2006, and have successfully completed the CJIS-full access course.
- (2) A non-CJIS telecommunicator who gains employment as a CJIS telecommunicator shall successfully complete the CJIS-full access course within six (6) months from the date of his or her employment. A non-CJIS telecommunicator whose employing agency initiates the use of CJIS shall successfully complete the CJIS-full access course within six (6) months from the date that the agency initiates the use of CJIS.
- (3) All CJIS telecommunicators, whether originally employed before or after July 15, 2006, shall successfully complete each calendar year an in-service training course, appropriate to their job assignment and

responsibility, of at least eight (8) hours' duration at a school certified or recognized by the Kentucky Law Enforcement Council.

- (4) All CJIS telecommunicators, whether originally employed before or after July 15, 2006, shall successfully complete eight (8) hours of CJIS in-service training every two (2) years at a school certified or recognized by the Kentucky Law Enforcement Council.
- (5) Extensions of time in which to complete the training specified in this section may be granted by the commissioner of the Department of **Kentucky** State Police or the commissioner's designee.
- (6) A CJIS telecommunicator who fails to complete the training within a period of six (6) months and any extension of time granted under this section shall be terminated by the employing agency and shall not be permitted to serve as a telecommunicator with any governmental agency in the Commonwealth for a period of one (1) year.

Section 32. KRS 15.570 is amended to read as follows:

The secretary of justice **and public safety** shall with the approval of the Kentucky Law Enforcement Council waive the basic telecommunicator training program and certify applicants who furnish evidence of satisfactory completion of a basic law enforcement telecommunicator training program which, in the council's opinion, is comparable to that of the training program.

Section 33. KRS 15.706 is amended to read as follows:

- (1) The Prosecutors Advisory Council shall collect statistical data regarding the investigation, prosecution, dismissal, conviction, or acquittal of any person charged with committing, attempting to commit, or complicity to a sexual offense defined by KRS Chapter 510 involving a minor, incest involving a minor, use of a minor in a sexual performance, or unlawful transaction with a minor.
- (2) Each Commonwealth's attorney, each county attorney, the secretary of the Cabinet for Health and Family Services, the commissioner of the **Department of** Kentucky State Police, each Circuit Court clerk, and the Administrative Office of the Courts shall provide any data requested by the council for this purpose, on a form prescribed by the council, at intervals as the council may direct.
- (3) The council may contract with any other public agency to collect the data in lieu of collecting the data itself.
- (4) The Prosecutors Advisory Council may promulgate administrative regulations to specify information to be reported.
- (5) The information required to be reported by this section shall be provided by each Commonwealth's attorney and county attorney at the end of each quarter of the calendar year or as otherwise directed by the Prosecutors Advisory Council.
- (6) The Prosecutors Advisory Council and the Office of the Attorney General shall compile the information by county and issue a public report at least annually.
- (7) The public report shall not contain the name or identifying information of a victim or person not formally charged with the commission of child sexual abuse. Information collected by the Commonwealth's attorney or county attorney or by the Prosecutors Advisory Council containing data which cannot be published shall be excluded from inspection, unless by court order, from the Open Records Law.
- (8) Any Commonwealth's attorney or any county attorney who fails to report information as defined by this section or administrative regulation shall be subject to salary reduction as authorized by KRS 61.120.

Section 34. KRS 15.910 is amended to read as follows:

- (1) The state board shall be composed of the following members:
 - (a) The secretary of the Cabinet for Health and Family Services, the secretary of the Finance and Administration Cabinet, the chief state school officer, the commissioner of the **Department of Kentucky** State Police, and the Attorney General, or designees authorized to speak on their behalf; and
 - (b) Ten (10) public members appointed by the Governor. It is recommended that, as a group, the public members shall demonstrate knowledge in the area of child sexual abuse and exploitation prevention; shall be representative of the demographic composition of this state; and, to the extent practicable, shall be representative of all the following categories: parents, school administrators, law enforcement, the religious community, the legal community, the medical community, professional providers of child

sexual abuse and exploitation prevention services, and volunteers in child sexual abuse and exploitation prevention services.

- (2) The term of each public member shall be three (3) years, except that of the public members first appointed, three (3) shall serve for three (3) years, three (3) for two (2) years, and four (4) for one (1) year. A public member shall not serve more than two (2) consecutive terms whether partial or full. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.
- (3) The Attorney General shall serve as chairman or designate a chairperson of the state board in which case the chairperson shall serve in that position at the pleasure of the Attorney General. The state board may elect other officers and committees as it considers appropriate.
- (4) There shall be no per diem compensation; however, the schedule for reimbursement of expenses for the public members of the state board shall be the same as for state employees. The reimbursement, executive director and staff salaries, and all actual and necessary operating expenses of the state board shall be paid from the trust fund, pursuant to an authorization as provided in KRS 15.935.

Section 35. KRS 15.942 is amended to read as follows:

The Justice ***and Public Safety*** Cabinet, the Attorney General, the Administrative Office of the Courts, and the Cabinet for Health and Family Services shall develop a training plan for investigation of child sexual abuse cases and protection of child sexual abuse victims within the Commonwealth. They may seek assistance from any educational, legal, and mental and physical health-care professionals needed for implementation of training programs.

Section 36. KRS 15.990 is amended to read as follows:

Any person who knowingly or willfully makes any false or fraudulent statement or representation in any record, report, or application to the council, department, or other agency of the Justice ***and Public Safety*** Cabinet under KRS 15.410 to 15.510 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisoned for not less than thirty (30) days nor more than ninety (90) days, or both.

SECTION 37. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

- (1) ***The Criminal Justice Council is hereby created within the Justice and Public Safety Cabinet.***
- (2) ***The membership of the council shall consist of:***
 - (a) ***The secretary of the Justice and Public Safety Cabinet, who shall serve as the chair;***
 - (b) ***The Attorney General or his or her designee;***
 - (c) ***The chair of the Judiciary Committee of the House of Representatives or his or her designee;***
 - (d) ***The chair of the Judiciary Committee of the Senate or his or her designee;***
 - (e) ***The executive director of the Administrative Office of the Courts or his or her designee;***
 - (f) ***The president of the Kentucky Association of Criminal Defense Lawyers or his or her designee;***
 - (g) ***The deputy secretary of the Justice and Public Safety Cabinet, who shall serve as the deputy chair;***
 - (h) ***The commissioner of the Department of Kentucky State Police or his or her designee;***
 - (i) ***The commissioner of the Department of Criminal Justice Training or his or her designee;***
 - (j) ***The commissioner of the Department of Corrections or his or her designee;***
 - (k) ***The commissioner of the Department of Juvenile Justice or his or her designee;***
 - (l) ***The commissioner of the Department of Kentucky Vehicle Enforcement or his or her designee;***
 - (m) ***A representative of the County Attorneys Association;***
 - (n) ***The Public Advocate of Kentucky or his or her designee; and***
 - (o) ***A representative of the Commonwealth's Attorneys Association.***
- (3) ***The council shall undertake such research and other activities as may be authorized or directed by:***
 - (a) ***The secretary of the Justice and Public Safety Cabinet; or***

(b) The General Assembly.

- (4) Each member of the council shall have one (1) vote. Members of the council shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties. The council shall meet on the call of its chair.*
- (5) A simple majority of the members of the council shall constitute a quorum for the conduct of business at a meeting.*
- (6) The council is authorized to establish committees and appoint additional persons who may not be members of the council, as necessary to effectuate its purposes.*
- (7) The council's administrative functions shall be performed by the executive director of the Office of Legislative and Intergovernmental Services, appointed by the secretary of the Justice and Public Safety Cabinet and supported by the administrative, clerical, and other staff as allowed by budgetary limitations and as needed to fulfill the council's role and mission and to coordinate its activities.*

Section 38. KRS 15A.011 is amended to read as follows:

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

- (1) "~~Cabinet~~[Secretary]" means the ~~secretary of the~~ Justice **and Public Safety** Cabinet;*
- (2) "Commissioner" means the commissioner of the Department of Juvenile Justice;*
- (3) "Department" means the Department of Juvenile Justice;*
- (4) "Facility" means any facility operating under the authority or control of the Department of Juvenile Justice; and*
- (5) "~~Secretary~~[Cabinet]" means the **secretary of the** Justice **and Public Safety** Cabinet.*

Section 39. KRS 15A.015 is amended to read as follows:

Deputy secretaries of justice **and public safety** shall be appointed by and directly responsible to the secretary and shall be the principal assistants and advisors to the secretary for all policies, programs and operations of the cabinet.

Section 40. KRS 15A.020 is amended to read as follows:

- (1) The Justice and Public Safety Cabinet shall have the following departments:*
 - (a) Department of Corrections;*
 - (b) Department of Criminal Justice Training, which shall have the following divisions:*
 - 1. Training Operations Division;*
 - 2. Administrative Division; and*
 - 3. Training Support Division;*
 - (c) Department of Juvenile Justice, which shall have the following divisions:*
 - 1. Division of Medical Services;*
 - 2. Division of Western Region;*
 - 3. Division of Central Region;*
 - 4. Division of Eastern Region;*
 - 5. Division of Southeastern Region;*
 - 6. Division of Northern Region;*
 - 7. Division of Administrative Services;*
 - 8. Division of Program Services;*
 - 9. Division of Placement Services;*
 - 10. Professional Development Division;*
 - 11. Mental Health Services Division; and*

12. Community Services Division.

- (d) *Department of Kentucky Vehicle Enforcement, headed by a commissioner appointed pursuant to KRS 12.040, which shall perform functions required by KRS Chapter 281 and other state and federal laws and administrative regulations relating to commercial vehicles and vehicles for hire and which shall perform such other functions as may be assigned by the secretary. The Department of Kentucky Vehicle Enforcement shall have the following divisions:*
 - 1. *Division of Field Operations East;*
 - 2. *Division of Field Operations West;*
 - 3. *Division of Special Operations; and,*
 - 4. *Division of Administrative Services.*
 - (e) *Department of Kentucky State Police, which shall have the following divisions:*
 - 1. *Administrative Division;*
 - 2. *Operations Division; and*
 - 3. *Technical Services Division; and*
 - (f) *Department for Public Advocacy, which shall have the following divisions:*
 - 1. *Protection and Advocacy Division;*
 - 2. *Division of Law Operations;*
 - 3. *Division of Trial Services; and*
 - 4. *Division of Post-Trial Services.*
- (2) *Each department, except for the Department of Public Advocacy, shall be headed by a commissioner who shall be appointed by the secretary of justice and public safety with the approval of the Governor as required by KRS 12.040. Each commissioner shall be directly responsible to the secretary and shall have such functions, powers, and duties as provided by law and as the secretary may prescribe. The Department for Public Advocacy shall be headed by the public advocate, appointed as required by KRS 31.020, who shall be directly responsible to the Public Advocacy Commission. The Department of Public Advocacy is an independent state agency which shall be attached to the Justice and Public Safety Cabinet for administrative purposes only. The Justice and Public Safety Cabinet shall not have control over the Department of Public Advocacy's information technology equipment and use unless granted access by court order.*
- (3) *The Justice and Public Safety Cabinet shall have the following offices:*
- (a) *Office of the Secretary, which shall be headed by a deputy secretary appointed pursuant to KRS 12.050 and responsible for the direct administrative support for the secretary and other duties as assigned by the secretary, and which, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;*
 - (b) *Office of Management and Administrative Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 and who shall be responsible to and report to the secretary and be responsible for all matters relating to human resources, state and federal grants management, including but not limited to the administration of KRS 15A.060, fiscal functions, management and daily operations of the information processing activities for the cabinet, and management and daily administrative services for the cabinet; and who, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;*
 - (c) *Office of Legal Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 and KRS 12.210 to provide legal representation and services for the cabinet. The executive director shall be directly responsible to and report to the secretary and, with the approval of the secretary, may employ such attorneys appointed pursuant to KRS 12.210 and other staff as necessary to perform the duties, functions, and responsibilities of the office;*

- (d) *Office of Legislative and Intergovernmental Services, which shall be headed by an executive director appointed pursuant to KRS 12.050, and who shall be responsible for all matters relating to the provision of support to the Criminal Justice Council, legislative liaison services, and functions and duties vested in the Criminal Justice Council as described in Section 41 of this Act. The executive director shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;*
- (e) *Office of the Kentucky State Medical Examiner, which shall be headed by a chief medical examiner appointed pursuant to KRS 72.240 and who shall be responsible for all matters relating to forensic pathology and forensic toxicology and other duties as assigned by the secretary. The executive director, appointed pursuant to KRS 12.050, shall be responsible for all matters related to the administrative support of the Office of the State Medical Examiner. The executive director shall report directly to the secretary and with the approval of the secretary may employ such administrative support staff as necessary to perform the administrative duties, functions, and responsibilities of the office. The chief medical examiner shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the forensic duties, functions, and responsibilities of the office;*
- (f) *Office of Drug Control Policy, which shall be headed by an executive director appointed pursuant to KRS 12.050 and who shall be responsible for all matters relating to the research, coordination, and execution of drug control policy and for the management of state and federal grants including but not limited to the prevention and treatment related to substance abuse. By December 31 of each year, the Office of Drug Control Policy shall review, approve, and coordinate all current projects of any substance abuse program which is conducted by or receives funding through agencies of the executive branch. This oversight shall extend to all substance abuse programs which are principally related to the prevention or treatment, or otherwise targeted at the reduction, of substance abuse in the Commonwealth. The Office of Drug Control Policy shall promulgate administrative regulations consistent with enforcing this oversight authority. The executive director shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;*
- (g) *Office of Public Safety Training, which shall be headed by an executive director appointed pursuant to KRS 12.050 and who shall be responsible for all matters relating to the construction and operation of joint usage training facilities at the Public Safety Training Center for the cabinet. The Department of Criminal Justice Training shall provide all administrative and logistical support for this office. The executive director shall be responsible to and report to the secretary for all matters relating to the construction and operation of joint usage training facilities at the Public Safety Training Center, and management, scheduling, maintenance, and daily operations of the Public Safety Training Center. The executive director, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office; and*
- (h) *Office of Investigations, which shall be headed by an executive director appointed pursuant to KRS 12.050 and who shall be responsible for investigating all complaints regarding the facilities, staff, treatment of juveniles, and other matters relating to the operation of the Justice and Public Safety Cabinet. If it appears that there is a violation of statutes, administrative regulations, policies, court decisions, the rights of juveniles who are subject to the orders of the department, or any other matter relating to the Justice and Public Safety Cabinet, the office shall report to the secretary of the Justice and Public Safety Cabinet who shall, if required, refer the matter to a law enforcement agency, Commonwealth's attorney, county attorney, the Attorney General, or federal agencies, as appropriate. The executive director shall be directly responsible to and report to the secretary and, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office. The Office of Investigations may be used to investigate matters in which there is a suspicion of violation of written policy, administrative regulation, or statutory law within the Department of Public Advocacy only when such investigation will have no prejudicial impact upon a person who has an existing attorney-client relationship with the Department of Public Advocacy. Notwithstanding the provisions of this paragraph, investigation and discipline of KRS Chapter 16 personnel shall continue to be conducted by the Department of Kentucky State Police pursuant to KRS Chapter 16. The Office of Investigations shall conduct no other investigations.*
~~*There is established within the cabinet a Department of State Police, a Department of Corrections, a Department of Juvenile Justice, and a Department of Criminal Justice Training. Each*~~

~~department shall be headed by a commissioner appointed by the secretary with the approval of the Governor as required by KRS 12.050. The commissioners shall be directly responsible to the secretary and shall perform such functions, powers, and duties as provided by law and as the secretary may prescribe}.~~

Section 41. KRS 15A.030 is amended to read as follows:

- (1) The Justice *and Public Safety* Cabinet, in addition to the departments, *divisions, offices, and branches* set forth in *Section 40 of this Act*~~[KRS 15A.020]~~, shall consist of the following organizational units~~{which are hereby created or reestablished}~~:
 - (a) *Kentucky State Corrections Commission, supported by the Department of Corrections;*
 - (b) *Criminal Justice Council, supported by the Office of Legislative and Intergovernmental Services;*
 - (c) *Kentucky Law Enforcement Council, supported by the Department of Criminal Justice Training; and*
 - (d) *Kentucky Parole Board, supported by the cabinet.*
- (2) *Except for the Kentucky Parole Board, which shall be attached to the cabinet for administrative and support services only, each agency specified in this section shall:*
 - (a) *Perform its duties as specified by law;*
 - (b) *Except as otherwise provided by law, be under the general direction and control of the secretary;*
 - (c) *Perform such other duties as may be assigned to the secretary; and*
 - (d) *Report to the secretary*~~{(1) Office of the Secretary of Justice comprised of the secretary of justice, the Commission on Correction and Community Service, the Kentucky State Corrections Commission, the Office of the Criminal Justice Council, and the Criminal Justice Council. The Parole Board shall be attached to the Office of the Secretary for administrative and support purposes only.~~
- ~~(2) — Offices of Deputy Secretaries of Justice.~~
- ~~(3) — Office of the General Counsel.~~
- ~~(4) — Division of Kentucky State Medical Examiners Office.~~
- ~~(5) — Office of Management, Administrative, and Legal Services, which shall be responsible for providing information systems management, investigative services, and legal services to the Office of the Secretary. The office shall be headed by an executive director appointed by the secretary in accordance with KRS 12.050}.~~

Section 42. KRS 15A.040 is amended to read as follows:

- ~~{(1) —}~~ The *Office of the Secretary of the Justice and Public Safety Cabinet*~~{Criminal Justice Council}~~ shall advise and recommend to the *secretary of the Justice and Public Safety Cabinet*, the Governor, and the General Assembly policies and direction for long-range planning regarding all elements of the criminal justice system. The *office*~~{council}~~ shall *also*~~{review and make written recommendations on subjects including but not limited to administration of the criminal justice system, the rights of crime victims, sentencing issues, capital litigation, a comprehensive strategy to address gangs and gang problems, and the Penal Code. Recommendations for these and all other issues shall be submitted to the Governor and the Legislative Research Commission at least six (6) months prior to every regular session of the Kentucky General Assembly. The council shall}~~:
- (1) ~~{(a) — Make recommendations to the justice secretary with respect to the}~~ Award~~{of}~~ state and federal grants and ensure that the grants are consistent with the priorities adopted by the Governor~~{, the General Assembly, and the council}~~;
 - ~~(b) — Conduct comprehensive planning to promote the maximum benefits of grants;~~
 - ~~(c) — Develop model criminal justice programs};~~
 - ~~(2){(d)}~~ Disseminate information on criminal justice issues and crime trends; *and*
 - ~~{(e) — Work with community leaders to assess the influence of gangs and the problems that gangs cause for local communities, assist local communities in mobilizing community resources to address their~~

~~problems, sponsor multidisciplinary training to help communities focus on proven strategies to address gang problems, and conduct an ongoing assessment of gang problems in local communities;~~

- ~~(f) Recommend any modifications of law necessary to insure that the laws adequately address problems identified in local communities relating to gangs;]~~

~~(3)(g)] Provide technical assistance to all criminal justice agencies;~~

- ~~(h) Review and evaluate proposed legislation affecting criminal justice; and~~

- ~~(i) All reports and proposed legislation shall be presented to the Interim Joint Committee on Judiciary not later than July 1 of the year prior to the beginning of each regular session of the General Assembly.~~

~~(2) Membership of the Criminal Justice Council shall consist of the following:~~

- ~~(a) The secretary of the Justice Cabinet or his designee;~~

- ~~(b) The director of the Administrative Office of the Courts or his designee;~~

- ~~(c) The Attorney General or his designee;~~

- ~~(d) Two (2) members of the House of Representatives as designated by the Speaker of the House;~~

- ~~(e) Two (2) members of the Senate as designated by the President of the Senate;~~

- ~~(f) A crime victim, as defined in KRS Chapter 346, to be selected and appointed by the Governor;~~

- ~~(g) A victim advocate, as defined in KRS 421.570, to be selected and appointed by the Governor;~~

- ~~(h) A Kentucky college or university professor specializing in criminology, corrections, or a similar discipline to be selected and appointed by the Governor;~~

- ~~(i) The public advocate or his designee;~~

- ~~(j) The president of the Kentucky Sheriffs' Association;~~

- ~~(k) The commissioner of state police or his designee;~~

- ~~(l) A person selected by the Kentucky State Lodge of the Fraternal Order of Police;~~

- ~~(m) The president of the Kentucky Association of Chiefs of Police;~~

- ~~(n) A member of the Prosecutors Advisory Council as chosen by the council;~~

- ~~(o) The Chief Justice or a justice or judge designated by him;~~

- ~~(p) One (1) member of the Kentucky Association of Criminal Defense Lawyers, appointed by the president of the organization;~~

- ~~(q) One (1) member of the Kentucky Jailers' Association appointed by the president of the organization;~~

- ~~(r) One (1) member of the Circuit Clerks' Association;~~

- ~~(s) Three (3) criminal law professors, one each from the University of Kentucky College of Law, the Louis D. Brandeis School of Law at the University of Louisville, and the Salmon P. Chase College of Law at Northern Kentucky University, to be selected and appointed by the Governor;~~

- ~~(t) One (1) District Judge, designated by the Chief Justice;~~

- ~~(u) One (1) Circuit Judge, designated by the Chief Justice;~~

- ~~(v) One (1) Court of Appeals Judge, designated by the Chief Justice;~~

- ~~(w) One (1) representative from an organization dedicated to restorative principles of justice involving victims, the community, and offenders;~~

- ~~(x) One (1) individual with a demonstrated commitment to youth advocacy, to be selected and appointed by the Governor;~~

- ~~(y) The commissioner of the Department of Juvenile Justice or his designee;~~

- ~~(z) The commissioner of the Department of Corrections, or his designee;~~

- ~~(aa) The commissioner of the Department of Criminal Justice Training or his designee; and~~
- ~~(ab) The executive director of the Commonwealth Office of Technology.~~
- ~~(3) The secretary of justice shall serve ex officio as chairman of the council. Each member of the council shall have one (1) vote. Members of the council shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties.~~
- ~~(4) The council shall meet at least once every three (3) months.~~
- ~~(5) The council may hold additional meetings:~~
 - ~~(a) On the call of the chairman;~~
 - ~~(b) At the request of the Governor to the chairman; or~~
 - ~~(c) At the written request of the members to the chairman, signed by a majority of the members.~~
- ~~(6) Two thirds (2/3) members of the council shall constitute a quorum for the conduct of business at a meeting.~~
- ~~(7) Failure of any member to attend two (2) meetings within a six (6) month period shall be deemed a resignation from the council and a new member shall be named by the appointing authority.~~
- ~~(8) The council is authorized to establish committees and appoint additional persons who may not be members of the council as necessary to effectuate its purposes, including but not limited to:~~
 - ~~(a) Uniform Criminal Justice Information System committee;~~
 - ~~(b) Committee on sentencing; and~~
 - ~~(c) Penal Code committee.~~
- ~~(9) The council's administrative functions shall be performed by a full time executive director, who shall also serve as the executive director of the office of the Criminal Justice Council, appointed by the secretary of the Justice Cabinet and supported by the administrative, clerical, and other staff as allowed by budgetary limitations and as needed to fulfill the council's role and mission and to coordinate its activities].~~

Section 43. KRS 15A.060 is amended to read as follows:

The Office of Secretary of Justice *and Public Safety* shall serve as the state planning agency for purposes of compliance with the Federal Crime Control and Safe Streets Act of 1968, as amended, or subsequently adopted federal criminal justice legislation~~, and provide staff services to the Criminal Justice Council relating to the administration of these federally supported programs].~~

Section 44. KRS 15A.065 is amended to read as follows:

- (1) The Department of Juvenile Justice shall be headed by a commissioner and shall develop and administer programs for:
 - (a) Prevention of juvenile crime;
 - (b) Identification of juveniles at risk of becoming status or public offenders and development of early intervention strategies for these children, and, except for adjudicated youth, participation in prevention programs shall be voluntary;
 - (c) Providing educational information to law enforcement, prosecution, victims, defense attorneys, the courts, the educational community, and the public concerning juvenile crime, its prevention, detection, trial, punishment, and rehabilitation;
 - (d) The operation of or contracting for the operation of postadjudication treatment facilities and services for children adjudicated delinquent or found guilty of public offenses or as youthful offenders;
 - (e) The operation or contracting for the operation, and the encouragement of operation by others, including local governments, volunteer organizations, and the private sector, of programs to serve predelinquent and delinquent youth;
 - (f) Utilizing outcome-based planning and evaluation of programs to ascertain which programs are most appropriate and effective in promoting the goals of this section;

- (g) Conducting research and comparative experiments to find the most effective means of:
 - 1. Preventing delinquent behavior;
 - 2. Identifying predelinquent youth;
 - 3. Preventing predelinquent youth from becoming delinquent;
 - 4. Assessing the needs of predelinquent and delinquent youth;
 - 5. Providing an effective and efficient program designed to treat and correct the behavior of delinquent youth and youthful offenders;
 - 6. Assessing the success of all programs of the department and those operated on behalf of the department and making recommendations for new programs, improvements in existing programs, or the modification, combination, or elimination of programs as indicated by the assessment and the research; and
 - (h) Seeking funding from public and private sources for demonstration projects, normal operation of programs, and alterations of programs.
- (2) The Department of Juvenile Justice may contract, with or without reimbursement, with a city, county, or urban-county government, for the provision of probation, diversion, and related services by employees of the contracting local government.
- (3) The Department of Juvenile Justice may contract for the provision of services, treatment, or facilities which the department finds in the best interest of any child, or for which a similar service, treatment, or facility is either not provided by the department or not available because the service or facilities of the department are at their operating capacity and unable to accept new commitments. The department shall, after consultation with the Finance and Administration Cabinet, promulgate administrative regulations to govern at least the following aspects of this subsection:
- (a) Bidding process; and
 - (b) Emergency acquisition process.
- (4) The Department of Juvenile Justice shall develop programs to:
- (a) Ensure that youth in state-operated or contracted residential treatment programs have access to an ombudsman to whom they may report program problems or concerns;
 - (b) Review all treatment programs, state-operated or contracted, for their quality and effectiveness; and
 - (c) Provide mental health services to committed youth according to their needs.
- (5) (a) The Department of Juvenile Justice shall have an advisory board appointed by the Governor, which shall serve as the advisory group under the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, as amended, and which shall provide a formulation of and recommendations for meeting the requirements of this section not less than annually to the Governor, the Justice *and Public Safety* Cabinet, the Department of Juvenile Justice, the Cabinet for Health and Family Services, the Interim Joint Committees on Judiciary and on Appropriations and Revenue of the Legislative Research Commission when the General Assembly is not in session, and the Judiciary and the Appropriations and Revenue Committees of the House of Representatives and the Senate when the General Assembly is in session. The advisory board shall develop program criteria for early juvenile intervention, diversion, and prevention projects, develop statewide priorities for funding, and make recommendations for allocation of funds to the Commissioner of the Department of Juvenile Justice. The advisory board shall review grant applications from local juvenile delinquency prevention councils and include in its annual report the activities of the councils. The advisory board shall meet not less than quarterly.
- (b) The advisory board shall be chaired by a private citizen member appointed by the Governor and shall serve a term of two (2) years and thereafter be elected by the board. The members of the board shall be appointed to staggered terms and thereafter to four (4) year terms. The membership of the advisory board shall consist of no fewer than fifteen (15) persons and no more than thirty-three (33) persons who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice. A majority of the members shall not be full-time employees of any federal, state, or local government, and at least one-fifth (1/5) of the members shall be

under the age of twenty-four (24) years at the time of appointment. On July 15, 2002, any pre-existing appointment of a member to the Juvenile Justice Advisory Board and the Juvenile Justice Advisory Committee shall be terminated unless that member has been re-appointed subsequent to January 1, 2002, in which case that member's appointment shall continue without interruption. The membership of the board shall include the following:

1. Three (3) current or former participants in the juvenile justice system;
 2. An employee of the Department of Juvenile Justice;
 3. An employee of the Cabinet for Health and Family Services;
 4. A person operating alternative detention programs;
 5. An employee of the Department of Education;
 6. An employee of the Department of Public Advocacy;
 7. An employee of the Administrative Office of the Courts;
 8. A representative from a private nonprofit organization with an interest in youth services;
 9. A representative from a local juvenile delinquency prevention council;
 10. A member of the Circuit Judges Association;
 11. A member of the District Judges Association;
 12. A member of the County Attorneys Association;
 13. A member of the County Judge/Executives Association;
 14. A person from the business community not associated with any other group listed in this paragraph;
 15. A parent not associated with any other group listed in this paragraph;
 16. A youth advocate not associated with any other group listed in this paragraph;
 17. A victim of a crime committed by a person under the age of eighteen (18) not associated with any other group listed in this paragraph;
 18. A local school district special education administrator not associated with any other group listed in this paragraph;
 19. A peace officer not associated with any other group listed in this paragraph; and
 20. A college or university professor specializing in law, criminology, corrections, psychology, or similar discipline with an interest in juvenile corrections programs.
- (c) Failure of any member to attend three (3) meetings within a calendar year shall be deemed a resignation from the board. The board chair shall notify the Governor of any vacancy and submit recommendations for appointment.
- (6) The Department of Juvenile Justice shall, in cooperation with the Department of Public Advocacy, develop a program of legal services for juveniles committed to the department who are placed in state-operated residential treatment facilities and juveniles in the physical custody of the department who are detained in a state-operated detention facility, who have legal claims related to the conditions of their confinement involving violations of federal or state statutory or constitutional rights. This system may utilize technology to supplement personal contact. The Department of Juvenile Justice shall promulgate an administrative regulation to govern at least the following aspects of this subsection:
- (a) Facility access;
 - (b) Scheduling; and
 - (c) Access to residents' records.

- (7) The Department of Juvenile Justice may, if space is available and conditioned upon the department's ability to regain that space as needed, contract with another state or federal agency to provide services to youth of that agency.

Section 45. KRS 15A.090 is amended to read as follows:

The secretary shall establish the internal organization of the cabinet not *otherwise* established *by the Governor or the General Assembly* ~~in 1974 Acts, Chapter 74~~ and shall organize the cabinet into such organizational units as the secretary deems necessary to perform the functions, powers and duties of the cabinet, subject to the provisions of KRS Chapter 12.

Section 46. KRS 15A.160 is amended to read as follows:

The secretary may promulgate administrative regulations in accordance with KRS Chapter 13A *and direct proceedings and actions for the administration of all laws and functions which are vested in the cabinet except laws and functions vested in the Department of Public Advocacy.*

Section 47. KRS 15A.190 is amended to read as follows:

- (1) The Justice *and Public Safety* Cabinet in consultation with the Cabinet for Health and Family Services, the Kentucky Commission on Women, and any other agency concerned with particular acts of criminal activity, shall design, print, and distribute to all law enforcement agencies in the Commonwealth, a uniform reporting form which provides statistical information relating to the crimes involving domestic violence, child abuse, victimization of the elderly, including but not limited to elder abuse, neglect, and exploitation and other crimes against the elderly, or any other particular area of criminal activity deemed by the secretary of justice *and public safety* to require research as to its frequency.
- (2) The provision of subsection (1) of this section concerning the distribution of forms shall become effective on January 1, 2006.

Section 48. KRS 15A.195 is amended to read as follows:

- (1) No state law enforcement agency or official shall stop, detain, or search any person when such action is solely motivated by consideration of race, color, or ethnicity, and the action would constitute a violation of the civil rights of the person.
- (2) The secretary of the Justice *and Public Safety* Cabinet, in consultation with the Kentucky Law Enforcement Council, the Attorney General, the *Department* ~~Office~~ of Criminal Justice Training, the secretary of the Transportation Cabinet, the *Department of* Kentucky State Police, the secretary of the Environmental and Public Protection Cabinet, and the commissioner of the Department of Public Protection, shall design and implement a model policy to prohibit racial profiling by state law enforcement agencies and officials.
- (3) The Kentucky Law Enforcement Council shall disseminate the established model policy against racial profiling to all sheriffs and local law enforcement officials, including local police departments, city councils, and fiscal courts. All local law enforcement agencies and sheriffs' departments are urged to implement a written policy against racial profiling or adopt the model policy against racial profiling as established by the secretary of the Justice *and Public Safety* Cabinet within one hundred eighty (180) days of dissemination of the model policy. A copy of any implemented or adopted policy against racial profiling shall be filed with the Kentucky Law Enforcement Council and the Kentucky Law Enforcement Foundation Program Fund.
- (4)
 - (a) Each local law enforcement agency that participates in the Kentucky Law Enforcement Foundation Program fund under KRS 15.420 in the Commonwealth shall implement a policy, banning the practice of racial profiling, that meets or exceeds the requirements of the model policy disseminated under subsection (3) of this section. The local law enforcement agency's policy shall be submitted by the local law enforcement agency to the secretary of the Justice *and Public Safety* Cabinet within one hundred eighty (180) days of dissemination of the model policy by the Kentucky Law Enforcement Council under subsection (3) of this section. If the local law enforcement agency fails to submit its policy within one hundred eighty (180) days of dissemination of the model policy, or the secretary rejects a policy submitted within the one hundred and eighty (180) days, that agency shall not receive Kentucky Law Enforcement Foundation Program funding until the secretary approves a policy submitted by the agency.
 - (b) If the secretary of the Justice *and Public Safety* Cabinet approves a local law enforcement agency's policy, the agency shall not change its policy without obtaining approval of the new policy from the

secretary of the Justice *and Public Safety* Cabinet. If the agency changes its policy without obtaining the secretary's approval, the agency shall not receive Kentucky Law Enforcement Foundation Program funding until the secretary approves a policy submitted by the agency.

- (5) Each local law enforcement agency shall adopt an administrative action for officers found not in compliance with the agency's policy. The administrative action shall be in accordance with other penalties enforced by the agency's administration for similar officer misconduct.

Section 49. KRS 15A.197 is amended to read as follows:

The Justice *and Public Safety* Cabinet and its agencies may provide state personnel, state property, and other state resources to Trooper Island Incorporated.

Section 50. KRS 15A.310 is amended to read as follows:

- (1) The Department of Juvenile Justice, the Cabinet for Health and Family Services, the Department of Corrections, the Administrative Office of the Courts, and the *Department of* Kentucky State Police shall be responsible for the recording of those data elements for juveniles that are needed for the development of the centralized criminal history record information system.
- (2) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440.
- (3) The Department of Juvenile Justice shall provide access to Commonwealth's attorneys, county attorneys, law enforcement agencies, the *Department of* Kentucky State Police, the Department of Corrections, the Cabinet for Health and Family Services, and the Administrative Office of the Courts to its database.

Section 51. KRS 15A.350 is amended to read as follows:

- (1) The Justice *and Public Safety* Cabinet shall establish a motorcycle safety education program. The program shall provide for instructor training courses, instructor approval, and rider training courses for novice riders that shall be held at locations throughout the state. The program may provide for the following:
 - (a) Rider training courses for experienced riders;
 - (b) Activities to increase the awareness of a motorcyclist's knowledge of the effects of alcohol and drug use;
 - (c) Driver improvement efforts;
 - (d) Licensing improvement efforts;
 - (e) Program promotion activities;
 - (f) Enhancement of the public's awareness of motorcycles; and
 - (g) Enhancement of motorcycle safety through education.
- (2) The Justice *and Public Safety* Cabinet shall promulgate administrative regulations, pursuant to KRS Chapter 13A, governing the development of standards for, and the administration of, a motorcycle safety education program. Standards for the motorcycle rider training courses shall include standards for course content, delivery, curriculum, materials, student evaluation, and the training and approval of instructors. Standards shall meet or exceed established national standards for motorcycle rider training courses prescribed by the Motorcycle Safety Foundation.

Section 52. KRS 15A.358 is amended to read as follows:

- (1) The motorcycle safety education program fund is established as a restricted fund in the State Treasury. Moneys in the fund are hereby appropriated for the purposes set forth in KRS 15A.350 to 15A.366. Moneys in the fund shall be utilized to provide motorcycle training courses as established in KRS 15A.352 and for implementation of the program, including reimbursement of entities that offer approved motorcycle rider education courses. The Justice *and Public Safety* Cabinet shall not deduct administrative costs from the motorcycle safety education program fund.
- (2) If at the end of each fiscal year money remains in the fund, it shall be retained in the fund. The interest and income earned on money in the fund, after deducting any applicable charges, shall be credited to the motorcycle safety education program fund.
- (3) The following revenue shall be credited to the fund:

- (a) Four dollars (\$4) of the annual registration fee for each registered motorcycle as provided in KRS 186.050;
- (b) Four dollars (\$4) of the application fee for a motorcycle instruction permit as provided in KRS 186.531;
- (c) Four dollars (\$4) of the fee for each original or renewal motorcycle driver's license or endorsement as provided in KRS 186.531; and
- (d) Any federal or state motorcycle safety funds granted to the program.

Section 53. KRS 15A.360 is amended to read as follows:

The Justice *and Public Safety* Cabinet shall report monthly to the Interim Joint Committee on Appropriations and Revenue on the revenues deposited into the motorcycle safety education program fund, the expenditures incurred, and the available balance in the fund. In addition, the ~~Justice~~ cabinet shall identify the safety programs provided, the cost of the programs, location, and number of attendees. To facilitate the timely reporting of data under this section, the cabinet shall enter into agreements with entities that provide the training to require monthly billing and attendance records.

Section 54. KRS 15A.362 is amended to read as follows:

- (1) The Motorcycle Safety Education Commission is established as an independent body to help foster the growth and development of the motorcycle safety education program established under KRS 15A.350.
- (2) The Motorcycle Safety Education Commission shall be comprised of seven (7) members, appointed as follows:
 - (a) One (1) representative of the *Department of* Kentucky State Police, appointed by the Governor;
 - (b) One (1) representative of the Transportation Cabinet's Division of Driver Licensing, appointed by the Governor;
 - (c) One (1) instructor in the motorcycle safety education program, appointed by the Governor;
 - (d) Two (2) members of the Kentucky Motorcycle Association, to be appointed by the Governor from a list of five (5) nominees selected by the association;
 - (e) One (1) member appointed by the Governor from a list of three (3) nominees selected by the President of the Senate; and
 - (f) One (1) member appointed by the Governor from a list of three (3) nominees selected by the Speaker of the House of Representatives.
- (3) Members of the Motorcycle Safety Education Commission shall serve a term of four (4) years. Sitting members shall be eligible to succeed themselves.
- (4) Commission members shall receive no compensation for their services, and shall not be compensated for expenses incurred from travel or in connection with the performance of their duties as commission members.
- (5) The commission shall elect its chair and vice chair from its membership.
- (6) The commission shall meet quarterly or upon the call of the chair or the request of the secretary of the Justice *and Public Safety* Cabinet.
- (7) The commission may take action only at meetings where a quorum is present.
- (8) The commission shall keep a record of its meetings and recommendations.

Section 55. KRS 15A.364 is amended to read as follows:

The Motorcycle Safety Education Commission shall have the following responsibilities:

- (1) Approve any administrative regulation relating to the motorcycle safety education program promulgated by the cabinet prior to the administrative regulation being filed with the Legislative Research Commission pursuant to KRS Chapter 13A;
- (2) Approve any proposal by the cabinet to contract for services pursuant to KRS Chapter 45A or any interagency agreement for services relating to the motorcycle safety education program prior to the issuance of the contract or the agreement;

- (3) Approve all expenditures of money relating to the motorcycle safety education program which has not been specifically authorized in the biennial budget;
- (4) Establish for the ~~Justice~~ cabinet the short-range and long-range goals to promote the continued growth and expansion of the motorcycle safety education program;
- (5) Make recommendations regarding the administration of the motorcycle safety education program;
- (6) Ensure that the ~~Justice~~ cabinet and the motorcycle safety education program is informed on the views and philosophies of interested parties; and
- (7) Act as a communication channel between the relevant state agencies and motorcyclists and the general public.

Section 56. KRS 16.010 is amended to read as follows:

As used in KRS 16.030 to 16.170, unless the context requires otherwise:

- (1) "Cabinet" means the Justice *and Public Safety* Cabinet;
- (2) "Secretary" means the secretary of justice *and public safety*;
- (3) "Commissioner" means the commissioner of the Department of *Kentucky* State Police;
- (4) "Officer" means any member of the *Department of* Kentucky State Police who possesses the powers of a peace officer;
- (5) "Civilian" means such experts, statisticians, clerks, and other assistants who do not possess the powers of a peace officer;
- (6) "Board" means the *Department of Kentucky* State Police Personnel Board; and
- (7) "Department" means the Department of *Kentucky* State Police.
- (8) "Continuous service" for participation in and eligibility for the promotional process for each rank means:
 - (a) For sergeant, service as a commissioned Kentucky State Police officer that has not been interrupted by actual separation from the department, whether in the form of resignation, retirement, or termination;
 - (b) For lieutenant, service in grade as a sergeant that has not been interrupted by actual separation from the department, whether in the form of resignation, retirement, termination, or by demotion in accordance with KRS 16.140;
 - (c) For captain, service in grade as lieutenant that has not been interrupted by actual separation from the department, whether in the form of resignation, retirement, termination, or by demotion in accordance with KRS 16.140.

Section 57. KRS 16.050 is amended to read as follows:

- (1) The commissioner shall appoint or promote to the ranks and grades and positions of the department such officers as are considered by him *or her* to be necessary for the efficient administration of the department. Notwithstanding the provisions of KRS 64.640, the commissioner of the *Department of Kentucky* State Police and the secretary of the Personnel Cabinet shall biennially conduct a salary survey, by rank, of State Police/highway patrol officers in those states adjoining Kentucky. The salaries of such officers of equal rank in those states surveyed shall be averaged, and such averages where the average for that rank exceeds the salary paid to Kentucky officers of that rank in the preceding biennium, shall be included in the department's budget request submitted to the Kentucky General Assembly.
- (2) All initial appointments of officers to the department shall be made for merit and fitness after a competitive examination.
- (3) There is created a *Department of Kentucky* State Police Personnel Board consisting of the commissioner and four (4) other members to be appointed by the Governor, two (2) to be appointed from each of the two (2) major political parties.
- (4) The initial appointment of members of the board shall be for terms of one (1), two (2), three (3), and four (4) years. Thereafter each appointment shall be for a term of four (4) years, except that a person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed for the remainder of that term.

- (5) Members of the board may be removed by the Governor only for cause, after being given a copy of charges against them and an opportunity to be heard publicly on such charges before the Governor.
- (6) The board shall elect one (1) of its members chairman. It shall meet at such time and place as shall be specified by call of the commissioner. Three (3) members shall constitute a quorum for the transaction of business. Members of the board other than the commissioner shall receive compensation of fifty dollars (\$50) and reimbursement of travel expenses for each meeting of the board which they attend.
- (7) The board shall ~~promulgate~~~~make~~ administrative regulations to carry out the purposes herein, which shall include provisions for:
 - (a) Open competitive examination as to fitness of applicants for employment as officers; and
 - (b) Establishment of eligible lists as a result of such competitive examinations, from which lists vacancies shall be filled.
- (8) The board shall hear appeals from applicants for employment for which examinations are being given or have been conducted and from eligibles on examination registers subject to the procedural rules which the board may adopt pursuant to the provisions of this section.

Section 58. KRS 16.055 is amended to read as follows:

- (1) Promotions to sergeant within the department shall be on the following terms and conditions:
 - (a) The applicant must have served six (6) years of continuous service as a commissioned State Police officer to be eligible for promotion to sergeant;
 - (b) Promotions shall be based on cumulative scores computed from twenty percent (20%) on personnel performance evaluation, forty percent (40%) on job simulation examination, and forty percent (40%) on a written examination;
 - (c) The promotional list shall continue in existence for one (1) year, shall consist of the numerical scores and rankings of each applicant, and promotions shall be made in consecutive order beginning with the highest numerical ranking to fill an interim vacancy. When two (2) or more applicants receive the same numerical score, the order of placement on the list shall be determined by seniority of service. Upon the determination of a new numerical ranking following a new examination, all previous rankings shall be null and void;
 - (d) The written examination shall be prepared and administered by an individual designated by the commissioner. The materials and textbooks will be selected by the commissioner and his *or her* staff. The commissioner will inform all applicants at least three (3) months prior to the examination date of the exact material from which test questions will be taken;
 - (e) The written test shall be administered to all applicants at the same time. Immediately upon completion of the written test the applicant will receive his *or her* numerical score. Such numerical score shall remain valid for a period of two (2) years following the date of examination unless the source material upon which the test is based is changed by more than thirty percent (30%);
 - (f) The job simulation examination shall be evaluated by boards designated by the commissioner consisting of the commissioner or his *or her* designated appointee not lower than rank of captain, an officer from another police agency of the rank equal to the position for which the applicant is competing, an instructor from an accredited law enforcement education program, a personnel director from private industry, and an officer from the Kentucky State Police of the rank equal to the position for which the applicant is competing;
 - (g) The designated job simulation examination boards will perform all evaluations under guidelines developed and approved by the commissioner; and
 - (h) Personnel evaluations shall be made by the appropriate supervisory personnel under procedures established and approved by the commissioner.
- (2) Promotions from sergeant to lieutenant within the department shall be on the same terms and conditions as promotions to sergeant. In addition, any applicant for lieutenant must have completed at least one (1) year of continuous service in grade as sergeant.

- (3) Promotions from lieutenant to captain within the department shall be on the same terms and conditions as promotions to lieutenant. In addition, any applicant for captain must have completed at least one (1) year of continuous service in grade as lieutenant.
- (4) The department will develop and administer only one (1) test for each of the above ranks. All eligible applicants will be permitted to participate in the promotional process to the next highest position of responsibility wherever a vacancy exists.
- (5) Officers promoted to rank of sergeant, lieutenant, or captain shall serve a probationary period for one (1) year of continuous service from the effective date of their promotions, and may be reverted to their previous rank with or without cause at any time during this period.
- (6) The provisions of KRS 16.140 to the contrary notwithstanding, all ranks above the grade of captain are temporary and shall not be subject to the provisions for selection and promotion as required herein. All officers in such temporary positions shall serve at the pleasure of the commissioner and shall revert to their previous permanent rank upon the termination of their temporary appointment.
- (7) The total number of supervisory officers of all classifications shall be limited to a ratio not to exceed one (1) supervisor for every five (5) nonsupervisory officers.
- (8) No officer of the department, other than temporary positions above the rank of captain, shall be promoted to the next highest rank without competing with other officers as prescribed by this promotional procedure.
- (9) There shall be no discrimination based on race, sex, age, national origin, color, religion, creed, or political affiliation with respect to the department promotional system. All personnel actions are to be based solely on merit.

Section 59. KRS 16.065 is amended to read as follows:

In addition to the performance of all duties relating to the *Department of* Kentucky State Police, the department ~~of State Police~~ shall perform the following functions:

- (1) Security of state facilities located in Frankfort;
- (2) Highway enforcement; and
- (3) Water safety enforcement as provided in KRS Chapter 235.

Section 60. KRS 16.070 is amended to read as follows:

- (1) The commissioner is the head and chief executive officer of the department. He *or she* shall provide for himself *or herself* and each officer of the department, under the provisions of KRS 45A.045 to 45A.650, such uniforms, equipment, and facilities, including motor vehicles, necessary to the performance of ~~his or~~ their respective duties, but all uniforms, equipment, and facilities, including motor vehicles, shall remain the property of the Commonwealth. The commissioner may sell through the Finance and Administration Cabinet, under the provisions of KRS 45A.045 to 45A.650, such uniforms, equipment, and facilities, including motor vehicles, as become unfit for use, and all moneys received therefrom shall be paid into the State Treasury and credited to a revolving fund to be used by the department.
- (2) The commissioner shall keep an inventory and shall charge against each officer the value of all property of the department issued to him *or her*, and if it is determined by the commissioner that any loss or destruction of property was due to the carelessness or neglect of an officer, then the value of the property shall be deducted from the pay of the officer.
- (3) By agreement with the commissioner of highways of the Commonwealth, the commissioner of the Department of *Kentucky* State Police may provide for the leasing of motor vehicles and accessories thereto, radio facilities and equipment, office equipment and other property or facilities, upon such terms and conditions and for such compensation as said agreement may provide. The commissioner of highways and the commissioner of Department of *Kentucky* State Police may further provide, by agreement, for the service and repair at any state garage of motor vehicles or accessories thereto which are owned, operated, or rented by the department, upon such terms and conditions and for such compensation as said agreement may provide. Subject to KRS Chapter 42, the department is authorized, by lease or purchase, to acquire, maintain, and operate motor vehicles, and the officers of said department, including the commissioner, are authorized and empowered to operate such

motor vehicles in the course of their duties, and in carrying out the purposes, responsibilities, and functions provided for in KRS 16.010 to 16.170.

- (4) The commissioner shall establish local headquarters so as to best distribute the officers and employees of the department throughout the various sections of the Commonwealth where they will be most efficient in carrying out the provisions of KRS 16.010 to 16.170.

Section 61. KRS 16.075 is amended to read as follows:

- (1) The Department of **Kentucky** State Police may secure such automobile liability insurance as will reasonably protect the interest of members of the State Police when in the conduct of official business.
- (2) Policies authorized by this section shall be purchased only in accordance with regulations prescribed by the executive director of insurance and the secretary of the Finance and Administration Cabinet.

Section 62. KRS 16.080 is amended to read as follows:

- (1) The commissioner shall **promulgate administrative** ~~adopt, formulate, alter, and repeal rules and~~ regulations for the enlistment, training, discipline, and conduct of officers of the department and he **or she** may **promulgate administrative** ~~make any other rules and~~ regulations for the governing and operation of the department as appear to him **or her** reasonably necessary to carry out the provisions of KRS 16.010 to 16.170.
- (2) The commissioner may require any officer or civilian who receives or disburses public funds in the course of his **or her** duties to file a bond, conditioned that he **or she** will honestly, correctly, and according to law, receive, disburse, and account for all public moneys coming into his **or her** hands. The commissioner and each officer shall execute a bond to the Commonwealth of Kentucky in the sum of not less than two thousand dollars (\$2,000), conditioned upon the faithful discharge of his **or her** duties. The premium on the bonds shall be paid by the department. The commissioner and each officer of the department shall, before entering upon the discharge of their official duties, take the constitutional oath of office.
- (3) Subject to the provisions of KRS 56.440 to 56.550, the commissioner, with the approval of the Governor and the secretary of the Finance and Administration Cabinet, may acquire real estate or interests therein, by purchase, lease, or otherwise, necessary for the purposes of the department, and, with like approval, provide for the acquisition or construction of necessary buildings and other permanent structures and facilities. Title to any real estate acquired shall be taken in the name of the Commonwealth.

Section 63. KRS 16.090 is amended to read as follows:

The commissioner is authorized to organize and maintain a training school or schools for officers of the department, and in connection therewith to provide by **administrative** regulation the course and conduct of such training and the period of time for which any officer, or any applicant therefor, shall attend such school. The commissioner, under such **administrative** regulations as he **or she** may **promulgate** ~~adopt~~, is further authorized, but shall not be required, to make such training facilities available to any local governing unit within this Commonwealth.

Section 64. KRS 16.095 is amended to read as follows:

- (1) The Justice **and Public Safety** Cabinet shall require all officers employed by them to complete an educational course approved by the Cabinet for Health and Family Services on human immunodeficiency virus infection and acquired immunodeficiency syndrome. The Justice **and Public Safety** Cabinet shall develop literature on the human immunodeficiency virus infection and acquired immunodeficiency syndrome and a training curriculum of not more than four (4) hours for the instruction of officers. The literature and training curriculum shall include information of known modes of transmission and methods of controlling and preventing these diseases with an emphasis on appropriate behavior and attitude change. This training may be part of any other training required and for which law enforcement officers receive an allowance to attend. However, nonreceipt of allowance does not exclude a law enforcement officer from the training required in this section.
- (2) All officers shall successfully complete the training required. Any person holding the position of officer shall not exercise that position for more than one (1) year without successfully completing the required training. If an officer does not successfully complete the required training within the time specified, he **or she** shall be suspended from further service as an officer until he **or she** successfully completes the required training.

Section 65. KRS 16.165 is amended to read as follows:

Any **Department of Kentucky** State Police officer (as defined in KRS 16.010) who becomes disabled after July 1, 1977, as a direct result of an injury or disease arising out of the performance of a hazardous duty in the course of

employment with the department may elect to be retained on the regular payroll of the department ~~of State Police~~ subject to the following:

- (1) Compensation paid to the officer by the department shall be adjusted and maintained at the officer's regular rate of pay based upon the officer's rank and tenure with the department, and shall include annual increments, salary adjustments, and other benefits of employment, provided, however, such compensation paid to the officer by the department shall be reduced by the amount of payments received by the officer from workers' compensation insurance, Social Security benefits and other federal or state financed disability programs designed to supplement the officer's income for which the officer is qualified and elects participation. Final compensation shall not be reduced by payments for medical care. The disabled officer's regular rate of pay, without the reductions required by this subsection, shall be his creditable compensation for purposes of KRS 16.510 to 16.652.
- (2) Such officer shall be assigned by the commissioner of the Department of **Kentucky** State Police to a position in the department for which ~~the officer~~ ~~he~~ is qualified, if the commissioner determines, based upon medical reports and recommendations submitted for that purpose, that the officer is able to perform limited duties. If it is determined that the officer is able to perform limited duties and refuses to accept an assignment from the commissioner, the officer shall not be eligible for the payment of compensation authorized by this section. If the commissioner determines that the officer is unable to perform limited duties, the officer shall be eligible for the payment of compensation authorized by this section without the performance of limited duties. Any officer adversely affected or aggrieved by a final determination of the commissioner pursuant to this section may appeal within thirty (30) days to the local Circuit Court.
- (3) Payments made pursuant to this section shall continue until the officer is eligible for normal retirement allowances pursuant to KRS 16.576 or until the officer elects early retirement allowances pursuant to KRS 16.577 or disability retirement allowances pursuant to KRS 16.582. If the officer receives preretirement payments under this section or KRS 16.167 and subsequently elects disability retirement, the effective date of his disability retirement shall be the first month following the month in which the officer last receives preretirement payments under this section or KRS 16.167, KRS 16.505(16) to the contrary notwithstanding.
- (4) Any **Department of Kentucky** State Police officer, disabled prior to July 1, 1977, as a result of severe physical injuries arising out of the performance of duty, who is unable to maintain gainful employment as a result of such injuries, but who was ineligible for retention on the regular payroll because of the date of his injury, shall, if his *or her* time in active service plus his *or her* time on disability retirement allowance equal the time necessary for normal retirement pursuant to KRS 16.505(15), have his *or her* retirement allowance increased to the amount he *or she* would receive, had he *or she* been retained on the regular payroll of the department pursuant to this section and had he *or she* subsequently elected normal retirement pursuant to KRS 16.576 when first eligible, but any survivor option which he *or she* chose at the time of disability retirement shall not be changed.

Section 66. KRS 16.167 is amended to read as follows:

Prior to his *or her* retirement under KRS 16.510 to 16.652, any **Department of Kentucky** State Police officer (as defined in KRS 16.010) who became disabled on or before July 1, 1977, as a result of an injury or disease arising out of the performance of a hazardous duty in the course of his *or her* employment with the department may elect benefits under KRS 16.165, if he *or she* qualifies therefor, or he *or she* may elect to continue receiving preretirement benefits otherwise available to him *or her* due to the disability.

Section 67. KRS 16.175 is amended to read as follows:

- (1) The Department of **Kentucky** State Police, in cooperation with the Transportation Cabinet, the Division of Emergency Management, the Kentucky Broadcasters Association, and the Kentucky Press Association, shall operate a system to notify the public when a child has been abducted and the department ~~of State Police~~ determines that public notification might aid in the recovery of the child. The system shall be known as the Kentucky Amber alert system.
- (2) The system shall utilize existing resources, including but not limited to electronic highway signs, the emergency broadcast system, law enforcement communications systems, and local, regional, and statewide media providers.

- (3) No public alert using the system shall be issued unless the department~~[of State Police]~~, in consultation with the law enforcement agency in the jurisdiction in which the abduction of a minor occurred, have determined:
 - (a) That the minor has actually been abducted or that all available evidence strongly indicates that the minor has been abducted;
 - (b) That public notification is the most appropriate method of recovering the child in a safe and efficient manner; and
 - (c) The geographic area in which the notification shall be made.
- (4) If it is determined by the department~~[of State Police]~~ that public notification shall be initiated, the department~~[of State Police]~~ shall notify the public and private agencies and organizations which will actually provide the notification and shall provide those organizations and agencies with the information which the department~~[of State Police]~~ deems necessary.
- (5) All law enforcement agencies in the Commonwealth shall cooperate with the department~~[of State Police]~~ in the provision and dissemination of information regarding any abducted minor.
- (6) No law enforcement agency, other than the department~~[of State Police]~~, shall activate the notification system specified in this section without the authority of the department~~[of State Police]~~.
- (7) The system shall be operated by all agencies of the Commonwealth within existing budgetary appropriations.

Section 68. KRS 16.185 is amended to read as follows:

- (1) Any officer who is sued for any act or omission in the line of duty and who has a judgment for monetary damages rendered against him *or her* in his *or her* individual capacity, and who personally suffers actual financial loss, unreimbursed from any source, by the enforcement and satisfaction of the judgment, including any costs or attorney fees awarded pursuant thereto, shall be indemnified by the Commonwealth, from funds appropriated to the Finance and Administration Cabinet for the payment of judgments, to the extent of his *or her* actual financial loss.
- (2) The indemnification shall be contingent upon an express determination by the commissioner that the act or omission which resulted in liability was within the scope and course of the officer's employment and occurred during the performance of duty and was committed or omitted in the good faith belief that the act or omission was lawful and proper.
- (3) If the officer seeking indemnification is the commissioner, the determination referred to in subsection (2) of this section shall be made by the Governor.
- (4) The indemnification shall not be construed to abrogate or limit any privilege, immunity, or matter of defense otherwise available to the officer and shall not constitute a waiver of any privilege, immunity, or matter of defense, including the sovereign immunity of the Commonwealth.
- (5) The indemnification shall not be the subject of comment, directly or indirectly, before any jury hearing any cause of action in which an officer is a party, and any comment before the jury shall result in an immediate mistrial.

Section 69. KRS 16.200 is amended to read as follows:

- (1) The **Department of** Kentucky State Police shall administer a program for the investigation of applications filed pursuant to KRS 514.130 and the disposition of property pursuant to KRS 500.090.
- (2) Upon a finding by the ~~department~~~~[Kentucky State Police]~~ or a local law enforcement agency assigned by the ~~department~~~~[Kentucky State Police]~~ to investigate an application filed pursuant to KRS 514.120 that the property is lawfully owned by the applicant, the ~~department~~~~[Kentucky State Police]~~ shall issue, or cause to be issued, in consultation with any state or federal regulatory agency, a suitable identification number to be affixed to the property together with a document stating the number so issued.
- (3) Upon a finding by the ~~department~~~~[Kentucky State Police]~~ or a local law enforcement agency assigned by the ~~department~~~~[Kentucky State Police]~~ to investigate an application filed pursuant to KRS 514.120 that the property is not lawfully owned by the applicant, the ~~department~~~~[Kentucky State Police]~~ shall seize the property or cause it to be seized by the local agency and held for disposition by a court of competent jurisdiction.

- (4) The ~~*department*~~~~[Kentucky State Police]~~ shall ~~*promulgate*~~~~[issue]~~ such *administrative* regulations as are reasonably necessary to enforce the provisions of this section and KRS 500.090 and 514.130.

Section 70. KRS 16.210 is amended to read as follows:

- (1) Property taken by the ***Department of*** Kentucky State Police shall be placed with the property officer of the post to which the officer is assigned.
- (2) Property which is forfeited may be disposed of as provided by KRS 500.090; however, the proceeds of any sale shall go to the state or be distributed as otherwise provided by law.
- (3) All other property may be disposed of as provided in KRS 67.592 and 67.594 except that all proceeds from any sale shall go to the state.

Section 71. KRS 16.220 is amended to read as follows:

- (1) Subject to the duty to return confiscated firearms to innocent owners pursuant to KRS 500.090, all firearms confiscated by the ***Department of*** Kentucky State Police and not retained for official use pursuant to KRS 500.090 shall be sold at public auction to federally licensed firearms dealers holding a license appropriate for the type of firearm sold. The ***Department of*** Kentucky State Police shall transfer firearms that are to be sold to the Department for Facilities and Support Services, Division of Surplus Properties, for sale. Proceeds of the sale shall be transferred to the account of the Department for Local Government for use as provided in subsection (3) of this section. Prior to the sale of any firearm, the ***Department of*** Kentucky State Police shall make an attempt to determine if the firearm to be sold has been stolen or otherwise unlawfully obtained from an innocent owner and return the firearm to its lawful innocent owner, unless that person is ineligible to purchase a firearm under federal law.
- (2) The ***Department of*** Kentucky State Police shall receive firearms and ammunition confiscated by or abandoned to every law enforcement agency in Kentucky. The ~~*department*~~~~[Kentucky State Police]~~ shall dispose of the firearms received in the manner specified in subsection (1) of this section. However, firearms which are not retained for official use, returned to an innocent lawful owner, or transferred to another government agency or public museum shall be sold as provided in subsections (1) and (3) of this section.
- (3) The proceeds of firearms sales shall be utilized by the Department for Local Government to provide grants to city, county, charter county, and urban-county police departments, university safety and security departments organized pursuant to KRS 164.950 and sheriff's departments for the purchase of body armor for sworn peace officers of those departments and service animals, as defined in KRS 525.010, of those departments or for the purchase of firearms or ammunition. Body armor purchased by the department receiving grant funds shall meet or exceed the standards issued by the National Institute of Justice for body armor. No police or sheriff's department shall apply for a grant to replace existing body armor unless that body armor has been in actual use for a period of five (5) years or longer.
- (4) The ***Department of*** Kentucky State Police may transfer a machine gun, short-barreled shotgun, short-barreled rifle, silencer, pistol with a shoulder stock, any other weapon, or destructive device as defined by the National Firearms Act which is subject to registration under the National Firearms Act, and is not properly registered in the national firearms transfer records for those types of weapons, to the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury, after a reasonable attempt has been made to transfer the firearm to an eligible state or local law enforcement agency or to an eligible museum and no eligible recipient will take the firearm or weapon. National Firearms Act firearms and weapons which are properly registered and not returned to an innocent lawful owner or retained for official use as provided in this section shall be sold to properly licensed dealers under subsection (3) of this section.

Section 72. KRS 16.505 is amended to read as follows:

As used in KRS 16.510 to 16.652, unless the context otherwise requires:

- (1) "System" means the State Police Retirement System created by KRS 16.510 to 16.652;
- (2) "Board" means the board of trustees of the Kentucky Retirement Systems;
- (3) "Employer" or "State Police" means the Department of ***Kentucky*** State Police, or its successor;

- (4) "Current service" means the number of years and completed months of employment as an employee subsequent to July 1, 1958, for which creditable compensation was paid by the employer and employee contributions deducted except as otherwise provided;
- (5) "Prior service" means the number of years and completed months of employment as an employee prior to July 1, 1958, for which creditable compensation was paid to the employee by the Commonwealth. Twelve (12) months of current service in the system are required to validate prior service;
- (6) "Service" means the total of current service and prior service;
- (7) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4), together with interest credited on such amounts as provided in KRS 16.510 to 16.652, and any other amounts the member shall have contributed, including interest credited;
- (8) "Creditable compensation" means all salary and wages, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation," including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's total service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4);
- (9) "Final compensation" at any time means the creditable compensation of a member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during the three (3) year period, multiplied by twelve (12); the three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;
- (10) "Final rate of pay" means the actual rate upon which earnings of a member were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, or one (1) year;
- (11) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
- (12) "Retirement allowance" means the retirement payments to which a retired member is entitled;
- (13) "Actuarially equivalent benefits" means benefits which are of equal value when computed upon the basis of actuarial tables adopted by the board, except that, in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;
- (14) "Authorized leave of absence" means any time during which a person is absent from employment but retained in the status of an employee in accordance with the personnel policy of the Department of *Kentucky* State Police;
- (15) "Normal retirement date" means the first day of the month following a member's fifty-fifth birthday, except that for members over age fifty-five (55) on July 1, 1958, it shall mean January 1, 1959;
- (16) "Disability retirement date" means the first day of the month following the last day of paid employment;

- (17) "Dependent child" means a child in the womb and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22);
- (18) "Optional allowance" means an actuarially equivalent benefit elected by the member in lieu of all other benefits provided by KRS 16.510 to 16.652;
- (19) "Act in line of duty" means an act occurring or a thing done, which, as determined by the board, was required in the performance of the duties specified in KRS 16.060. For employees in hazardous positions under KRS 61.592, an "act in line of duty" shall mean an act occurring which was required in the performance of the principal duties of the position as defined by the job description;
- (20) "Early retirement date" means the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service;
- (21) "Member" means any officer included in the membership of the system as provided under KRS 16.520 whose membership has not been terminated under KRS 61.535;
- (22) "Regular full-time officers" means the occupants of positions as set forth in KRS 16.010;
- (23) "Hazardous disability" as used in KRS 16.510 to 16.652 means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;
- (27) "Person" means a natural person;
- (28) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (29) "Delayed contribution payment" means an amount paid by an employee for purchase of current service. The amount shall be determined using the same formula in KRS 61.5525, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member;
- (30) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month. Last day of paid employment does not mean a date the employee receives payment for accrued leave, whether by lump sum or otherwise, if that date occurs twenty-four (24) or more months after previous contributions;
- (31) "Objective medical evidence" means reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including but not limited to chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;
- (32) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year;
- (33) "Participating" means an employee is currently earning service credit in the system as provided in KRS 16.543; and

- (34) "Month" means a calendar month.

Section 73. KRS 16.520 is amended to read as follows:

- (1) Membership in the system shall consist of all regular full-time officers of the **Department of** Kentucky State Police appointed pursuant to KRS 16.050 who are entitled to exercise the powers of peace officers except those who do not choose to participate pursuant to KRS 61.545(3).
- (2) Membership in the system shall not include those employees who are simultaneously participating in another state-administered defined benefit plan within Kentucky other than those administered by the Kentucky Retirement Systems, except for employees who have ceased to contribute to one (1) of the state-administered retirement plans as provided in KRS 21.360.

Section 74. KRS 16.543 is amended to read as follows:

- (1) Employee contributions shall be deducted from the creditable compensation of each member of the retirement system in the active employment of the Department of **Kentucky** State Police of the Justice **and Public Safety** Cabinet as an officer as defined in KRS 16.520. After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 16.545(4). Service credit shall be allowed for each month such member receives creditable compensation for an average of one hundred (100) hours or more of work per month. If the average number of hours of work is less than one hundred (100) per month, the member shall be allowed credit only for those months he **or she** receives creditable compensation for one hundred (100) hours of work.
- (2) Contributions shall not be made and no service will be earned while on authorized leave except:
 - (a) A member shall be entitled to service credit in accordance with KRS 61.555; and
 - (b) A member on educational leave, approved by the Personnel Cabinet, who is receiving seventy-five percent (75%) or more of full salary, shall receive service credit and shall pay member contributions or such contributions shall be picked up in accordance with KRS 16.545 and his **or her** employer shall pay employer contributions in accordance with KRS 61.565. If a tuition agreement is broken by the member, the member and employer contributions paid or picked up during the period of educational leave shall be refunded.
- (3) The retirement office, upon detection, shall refund any erroneous employer and employee contributions made to the retirement system and any interest credited in accordance with KRS 16.560.

Section 75. KRS 17.110 is amended to read as follows:

- (1) All city and county law enforcement agencies shall cause a photograph, a set of fingerprints, and a general description report of all persons arrested on a felony charge to be made and two (2) copies of each item forwarded within thirty (30) days after the arrest to the Department of **Kentucky** State Police of the Justice **and Public Safety** Cabinet, in accordance with **administrative** regulations of the ~~Justice~~ cabinet. Unless the charges are dismissed or withdrawn at that appearance, the judge shall require any adult person appearing before any Circuit Court in the Commonwealth on a felony charge, who has not been arrested, to, if this has not already been done in the case before the court, be photographed and fingerprinted, and have a general description made following his arraignment. Agencies specified above shall furnish any other information involving offenses or in their possession relative to law enforcement upon request by the ~~Justice~~ cabinet.
- (2) Each city and county law enforcement agency shall advise the Department of **Kentucky** State Police of the disposition made of all cases wherein a person has been charged with an offense.

Section 76. KRS 17.115 is amended to read as follows:

- (1) The Justice **and Public Safety** Cabinet shall:
 - (a) Receive and file fingerprints, photographs, and other records pertaining to the investigation of crime and the apprehension of criminals; and
 - (b) Cooperate with the state, county, and city law enforcing agencies of other states and of the United States in order to develop and carry on an interstate and national system of criminal identification.
- (2) Persons in charge of any penal or correctional institution in the state, and all state law enforcement and peace officers operating identification facilities shall cooperate in providing the cabinet with fingerprints and descriptions of all persons lawfully committed to their custody or detained by them in cases where fingerprints and descriptions are taken, together with a report of the disposition of all cases of such persons.

Section 77. KRS 17.120 is amended to read as follows:

The Justice *and Public Safety* Cabinet shall forward one (1) copy of each photograph, set of fingerprints and general description report received by it *in a criminal case* to the Federal Bureau of Investigation.

Section 78. KRS 17.125 is amended to read as follows:

- (1) The following agencies shall, subject to restrictions imposed by state or federal law, disclose and share with each other all information they maintain on a juvenile in a facility or program or informal adjustment authorized by law:
 - (a) All sheriff's offices, police departments, and any other law enforcement agency;
 - (b) All Commonwealth's attorneys and county attorneys;
 - (c) The Attorney General;
 - (d) All jails and juvenile detention facilities, public and private;
 - (e) All courts and clerks of courts;
 - (f) The Administrative Office of the Courts;
 - (g) All departments within the Justice *and Public Safety* Cabinet; and
 - (h) All departments within the Cabinet for Health and Family Services.
- (2) Except as provided in this section, all information shared by agencies specified above shall be subject to applicable confidentiality disclosure, redisclosure, and access restrictions imposed by federal or state law.
- (3) All public or private elementary or secondary schools, vocational or business schools, or institutions of higher education shall provide all records specifically requested in writing, and pertaining to status offenders, public offenders, youthful offenders, juveniles remanded to detention, and any juvenile convicted by a court, to any of the agencies listed in subsection (1) of this section. The records or information provided pursuant to this subsection shall be subject to:
 - (a) Access or other restrictions imposed by federal or state law;
 - (b) All confidentiality restrictions imposed by federal or state law; and
 - (c) All disclosure and redisclosure restrictions imposed by federal or state law.
- (4) Any request for records, the provision of records, the sharing of records, the disclosure of records, or the redisclosure of records shall be done for official purposes only, on a bona fide need to know basis, and only in connection with a legitimate investigation, prosecution, treatment program, or educational program.
- (5) Information and records relating to pending litigation in Circuit Court, District Court, or a federal court and information and records relating to an ongoing investigation are not subject to disclosure or sharing under this section.
- (6) Obtaining or attempting to obtain a record relating to a minor or by sharing or attempting to share a record relating to a minor with an unauthorized person is a violation of this section.

Section 79. KRS 17.131 is amended to read as follows:

- (1) There is hereby established the Kentucky Unified Criminal Justice Information System, referred to in this chapter as the "system." The system shall be a joint effort of the criminal justice agencies, *the Courts of Justice, and the Office of Homeland Security* ~~and the courts~~. Notwithstanding any statutes, administrative regulations, and policies to the contrary, if standards and technologies other than those set by the Commonwealth Office of Technology are required, the executive director of the Commonwealth Office of Technology shall review, expedite, and grant appropriate exemptions to effectuate the purposes of the unified criminal justice information system. Nothing in this section shall be construed to hamper any public officer or official, agency, or organization of state or local government from furnishing information or data that they are required or requested to furnish and which they are allowed to procure by law, to the General Assembly, the Legislative Research Commission, or a committee of either. For the purposes of this section, "criminal justice agencies" include all departments of the Justice *and Public Safety* Cabinet *except the Department of Public Advocacy*, the Unified Prosecutorial System, Commonwealth's attorneys, county attorneys, the Transportation

Cabinet, the Cabinet for Health and Family Services, and any agency with the authority to issue a citation or make an arrest.

- (2) The program to design, implement, and maintain the system shall be under the supervision of the *executive director of the Office of Homeland Security in consultation with the executive director of the Commonwealth Office of Technology and the Administrative Office of the Courts* ~~[Uniform Criminal Justice Information System Committee of the Criminal Justice Council. The membership of this committee shall be determined by the council, upon the recommendation of the executive director of the Commonwealth Office of Technology, who shall chair the committee].~~
- (3) The *executive director of the Office of Homeland Security, the executive director of the Commonwealth Office of Technology, and a representative of the Administrative Office of the Courts, or their respective designees*, ~~[committee]~~ shall be responsible for recommending standards, policies, and other matters to the secretary of justice *and public safety* for promulgation of administrative regulations in accordance with KRS Chapter 13A to implement the policies, standards, and other matters relating to the system and its operation.
- (4) ~~[The committee shall submit recommendations to the Criminal Justice Council and the secretary of justice for administrative regulations to implement the uniform policy required to operate the system. The committee shall implement the uniform policy.]~~
- (5) ~~[The uniform policy shall include a system to enable the criminal justice agencies and the courts to share data stored in each other's information systems. Initially, the uniform policy shall maximize the use of existing databases and platforms through the use of a virtual database created by network linking of existing databases and platforms among the various departments. The uniform policy shall also develop plans for the new open system platforms before the existing platforms become obsolete.]~~
- ~~[(6) The committee shall be responsible for recommending to the Criminal Justice Council and the secretary of justice any necessary changes in administrative regulations necessary to implement the system. The committee shall also recommend to the Criminal Justice Council, the Chief Justice, and the secretary of justice recommendations for statutory additions or changes necessary to implement and maintain the system. The secretary shall be responsible for reporting approved statutory recommendations to the Governor, the Chief Justice, the Legislative Research Commission, and appropriate committees of the General Assembly.]~~
- ~~(7) The chair of the committee shall report annually to the Criminal Justice Council on the status of the system.]~~
- (5)~~(8)~~ All criminal justice *and participating public safety* agencies shall follow the policies established by administrative regulation for the exchange of data and connection to the system.
- (6)~~(9)~~ The *executive director of the Commonwealth Office of Technology* ~~[committee]~~ shall review how changes to existing criminal justice agency applications impact the new integrated network. Changes to criminal justice agency applications that have an impact on the integrated network shall be coordinated through and approved by the *executive director of the Office of Homeland Security, in consultation with the Commonwealth Office of Technology* ~~[committee]~~.
- (7)~~(10)~~ Any future state-funded expenditures by a criminal justice agency for computer platforms in support of criminal justice applications shall be reviewed by the *Office of Homeland Security and the Commonwealth Office of Technology* ~~[committee]~~.
- (8) *As part of the unified criminal justice information system, the executive director of the Office of Homeland Security, in consultation with the secretary of the Justice and Public Safety Cabinet, the executive director of the Commonwealth Office of Technology, and the Administrative Office of the Courts, shall design and implement an automated warrant system. The automated warrant system shall be compatible with any similar system required by the federal government for inclusion of state information in federal criminal justice databases.*
- (9)~~(11)~~ Any criminal justice *and public safety* agency ~~[or officer]~~ that does not participate in the ~~[criminal justice information]~~ system may be denied access to state and federal grant funds.

Section 80. KRS 17.140 is amended to read as follows:

- (1) A centralized criminal history record information system shall be established in the Justice *and Public Safety* Cabinet under the direction, control and supervision of the commissioner of the Department of *Kentucky* State Police.

- (2) A centralized criminal history records information system means the system including equipment, facilities, procedures, and agreements for the collection, processing, preservation or dissemination of criminal history records maintained by the Justice *and Public Safety* Cabinet.

Section 81. KRS 17.147 is amended to read as follows:

The Department of *Kentucky* State Police shall:

- (1) Collect data necessary for the operation of the centralized criminal history record information system from all persons and agencies mentioned in KRS 17.150.
- (2) Prepare and distribute to all such persons and agencies forms to be used in reporting data to the centralized criminal history record information system. The forms shall provide for items of information needed by federal bureaus or departments engaged in the administration of criminal justice programs.
- (3) Prescribe the forms and content of records to be kept by such persons and agencies to insure reporting of data to the centralized criminal history record information system.
- (4) Instruct such persons and agencies in the installation, maintenance, and use of such records and in the manner of reporting to the centralized criminal history record information system.
- (5) Tabulate, analyze, and interpret the data collected.
- (6) Supply data, at their request, to participating federal bureaus, departments, or criminal justice agencies engaged in the administration of criminal justice programs.
- (7) Annually present to the Governor, on or before July 1, concerning the criminal statistics of the preceding calendar year, and present at such other times as the commissioner may deem wise, or the Governor may request, reports on special aspects of criminal statistics. A sufficient number of copies of all reports shall be printed for general distribution in the interest of public enlightenment.

Section 82. KRS 17.148 is amended to read as follows:

- (1) The Justice *and Public Safety* Cabinet, Department of *Kentucky* State Police, shall:
 - (a) Coordinate all efforts of the state's various departments and agencies to promote traffic safety and make recommendations regarding the prevention of unnecessary duplications of these efforts; and
 - (b) Cooperate with all organizations, public or private, in the encouragement and promotion of traffic safety education in all forms; and
 - (c) Receive, control and expend, in accordance with the general provisions of the Kentucky Revised Statutes governing financial administration of all state agencies, grants and funds from either public or private sources.
- (2) There are hereby transferred to and vested in the Department of *Kentucky* State Police all functions, powers, duties, funds, personnel, equipment and supplies relating to the administration of the National Highway Safety Act of 1966 in Kentucky, which responsibility and authority have been conferred upon the Transportation Cabinet.

Section 83. KRS 17.150 is amended to read as follows:

- (1) Every sheriff, chief of police, coroner, jailer, prosecuting attorney, probation officer, parole officer; warden or superintendent of a prison, reformatory, correctional school, mental hospital, or institution for the retarded; *Department of Kentucky* State Police, state fire marshal, Board of Alcoholic Beverage Control; Cabinet for Health and Family Services; Transportation Cabinet; Department of Corrections; Department of Juvenile Justice; and every other person or criminal justice agency, except the Court of Justice *and the Department of Public Advocacy*, public or private, dealing with crimes or criminals or with delinquency or delinquents, when requested by the cabinet, shall:
 - (a) Install and maintain records needed for reporting data required by the cabinet;
 - (b) Report to the cabinet as and when the cabinet requests all data demanded by it, except that the reports concerning a juvenile delinquent shall not reveal the juvenile's or the juvenile's parents' identity;
 - (c) Give the cabinet or its accredited agent access for purpose of inspection; and

- (d) Cooperate with the cabinet to the end that its duties may be properly performed.
- (2) Intelligence and investigative reports maintained by criminal justice agencies are subject to public inspection if prosecution is completed or a determination not to prosecute has been made. However, portions of the records may be withheld from inspection if the inspection would disclose:
 - (a) The name or identity of any confidential informant or information which may lead to the identity of any confidential informant;
 - (b) Information of a personal nature, the disclosure of which will not tend to advance a wholesome public interest or a legitimate private interest;
 - (c) Information which may endanger the life or physical safety of law enforcement personnel; or
 - (d) Information contained in the records to be used in a prospective law enforcement action.
- (3) When a demand for the inspection of the records is refused by the custodian of the record, the burden shall be upon the custodian to justify the refusal of inspection with specificity. Exemptions provided by this section shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this section.
- (4) Centralized criminal history records are not subject to public inspection. Centralized history records mean information on individuals collected and compiled by the Justice *and Public Safety* Cabinet from criminal justice agencies and maintained in a central location consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision, and release. The information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any proceeding related thereto. Nothing in this subsection shall apply to documents maintained by criminal justice agencies which are the source of information collected by the Justice *and Public Safety* Cabinet. Criminal justice agencies shall retain the documents and no official thereof shall willfully conceal or destroy any record with intent to violate the provisions of this section.
- (5) The provisions of KRS Chapter 61 dealing with administrative and judicial remedies for inspection of public records and penalties for violations thereof shall be applicable to this section.
- (6) The secretary of justice *and public safety* shall adopt the administrative regulations necessary to carry out the provisions of the criminal history record information system and to insure the accuracy of the information based upon recommendations submitted by the commissioner, Department of *Kentucky* State Police.
- (7) The Administrative Office of the Courts may, upon suitable agreement between the Chief Justice and the secretary of justice *and public safety*, supply criminal justice information and data to the cabinet. No information, other than that required by KRS 27A.350 to 27A.420 and 27A.440, shall be solicited from a circuit clerk, justice or judge, court, or agency of the Court of Justice unless the solicitation or request for information is made pursuant to an agreement which may have been reached between the Chief Justice and the secretary of justice *and public safety*.

Section 84. KRS 17.151 is amended to read as follows:

The *Department of* Kentucky State Police shall, in cooperation with the Administrative Office of the Courts, the Department of Juvenile Justice, the Cabinet for Health and Family Services, and the Department of Corrections, be responsible for the recording of those data elements that are needed for development of the centralized criminal history record information system:

- (1) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440;
- (2) The *Department of* Kentucky State Police shall provide access to the Administrative Office of the Courts, the Department of Juvenile Justice, the Cabinet for Health and Family Services, and the Department of Corrections to its database; and
- (3) The *Department of* Kentucky State Police, the Department of Juvenile Justice, the Cabinet for Health and Family Services, and the Department of Corrections shall assign the same identification number or other variable to each person whose name appears in the database.

Section 85. KRS 17.152 is amended to read as follows:

All data supplied to the centralized criminal history record information system by the **Department of** Kentucky State Police, Administrative Office of the Courts, the Department of Juvenile Justice, the Cabinet for Health and Family Services, and the Department of Corrections shall be compatible with the system and shall contain both citation and personal identification numbers.

Section 86. KRS 17.1522 is amended to read as follows:

The **Department of** Kentucky State Police shall update the centralized criminal history record information system within thirty (30) days of receipt of information. The update shall include information from the:

- (1) Offender level;
- (2) Arrest level; and
- (3) Informational and evaluational level.

Section 87. KRS 17.1523 is amended to read as follows:

- (1) The uniform offense report shall contain provisions for obtaining information as to whether or not specific crimes appear from their facts and circumstances to be caused as a result of or reasonably related to race, color, religion, sex, or national origin.
- (2) All law enforcement officers, when completing a uniform offense report, shall note thereon whether or not the offense appears to be caused as a result of or reasonably related to race, color, religion, sex, or national origin or attempts to victimize or intimidate another due to any of the foregoing causes.
- (3) The Justice **and Public Safety** Cabinet shall, annually, as a part of the crime reports report on crimes which appear to have been caused by the factors cited in subsections (1) and (2) of this section.

Section 88. KRS 17.160 is amended to read as follows:

- (1) Notwithstanding any other provision of law, an employer may request from the Justice **and Public Safety** Cabinet or the Administrative Office of the Courts, or both, records of all available convictions involving any felony offense, any misdemeanor offense in KRS Chapter 531 or KRS Chapter 510, any misdemeanor offense under KRS Chapter 218A committed within the five (5) years immediately preceding the application, or any conviction for violating KRS Chapter 189A committed within the five (5) years immediately preceding the application of a person who applies for employment or volunteers for a position in which he or she would have supervisory or disciplinary power over a minor. The cabinet or the Administrative Office of the Courts, as appropriate, shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.
- (2) Any request for records under subsection (1) of this section shall be on a form approved by the cabinet and the Administrative Office of the Courts. No fee shall be charged to the employer or to the person whose records were requested if funding for the record checks provided for in this section is provided through some other mechanism; otherwise the cabinet or the Administrative Office of the Courts may charge a fee to be paid by the organization making the request, not to exceed the actual cost of processing the request.
- (3) The cabinet and the Administrative Office of the Courts shall **promulgate**~~adopt~~ administrative regulations to implement the provisions of this section. No administrative regulation shall be adopted requiring or authorizing the fingerprinting of applicants.
- (4) As used in this section "employer" means any organization chartered by the Congress of the United States or specified by the Attorney General which employs or uses the services of volunteers or paid employees in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children. An organization which has an administrative office with paid personnel which has jurisdiction over suborganizations in one (1) or more counties shall make application for record checks through the administrative office of the organization and not through each individual suborganization.
- (5) Offenses which may be searched for under this section are ones involving any conviction, plea of guilty, or Alford plea, to any offense specified in subsection (1) of this section or the attempted violation of any offense specified in subsection (1) of this section. Conviction for a violation or attempted violation of an offense committed outside the Commonwealth of Kentucky is a crime if such offense would have been a crime in Kentucky under subsection (1) of this section if committed in Kentucky.

Section 89. KRS 17.165 is amended to read as follows:

- (1) As used in this section, "sex crime" means a conviction or a plea of guilty to a sex crime specified in KRS 17.500.
- (2) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.
- (3) As used in this section, "violent crime" shall mean a conviction of or a plea of guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.
- (4) No child-care center as defined in KRS 199.894 shall employ, in a position which involves supervisory or disciplinary power over a minor, or direct contact with a minor, any person who is a violent offender or has been convicted of a sex crime. Each child-care center shall request all conviction information for any applicant for employment from the Justice *and Public Safety* Cabinet or the Administrative Office of the Courts prior to employing the applicant.
- (5) No child-care provider that is required to be certified under KRS 199.8982 or that receives a public child-care subsidy administered by the cabinet or an adult who resides on the premises of the child-care provider and has direct contact with a minor shall have been convicted of a violent crime, or a sex crime, or have been found by the Cabinet for Health and Family Services or a court to have abused or neglected a child.
- (6) Each application form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (7) Any request for records under subsection (4) of this section shall be on a form approved by the Justice *and Public Safety* Cabinet or the Administrative Office of the Courts, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.
- (8) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988.

Section 90. KRS 17.167 is amended to read as follows:

- (1) As used in this section, "felony offender" means any person who has been convicted of, entered an Alford plea to, or pleaded guilty to the commission of a capital offense or a felony.
- (2) Any paid or volunteer fire department certified by the Commission on Fire Protection Personnel Standards and Education, ambulance service licensed by the Commonwealth of Kentucky, or rescue squad officially affiliated with a local disaster and emergency services organization or with the Division of Emergency Management may apply to the Justice *and Public Safety* Cabinet or the Administrative Office of the Courts for a felony offender record check on applicants for employment or membership with the fire department, ambulance service, or rescue squad.
- (3) Each application form, provided by a fire department, ambulance service, or rescue squad to an applicant for employment or membership, shall conspicuously state the following: "FOR EMPLOYMENT WITH OR MEMBERSHIP WITH A FIRE DEPARTMENT, AMBULANCE SERVICE, OR RESCUE SQUAD, STATE LAW PERMITS A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT OR MEMBERSHIP."
- (4) Any request for records under this section shall be on a form approved by the Justice *and Public Safety* Cabinet or the Administrative Office of the Courts. The Justice *and Public Safety* Cabinet and the Administrative Office of the Courts shall not charge a fee for making record checks.

Section 91. KRS 17.170 is amended to read as follows:

- (1) Any person, including a youthful offender as defined in KRS 600.020, detained in the custody of the Department of Juvenile Justice who is convicted of a felony offense under KRS Chapter 510 or KRS 530.020, shall, or who is in the custody of the Department of Corrections on July 14, 1992, under KRS Chapter 510 or KRS 530.020 may, have a sample of blood, an oral swab, or sample obtained through a noninvasive procedure taken by the Department of Corrections or the Department of Juvenile Justice, when appropriate, for DNA

(deoxyribonucleic acid) law enforcement identification purposes and inclusion in law enforcement identification databases.

- (2) The samples shall be obtained in a medically approved manner by a physician, registered nurse, phlebotomist, medical technician, or medical technologist, and packaged and submitted in containers provided by the Department of **Kentucky** State Police forensic laboratory in accordance with administrative regulations promulgated by the Department of **Kentucky** State Police forensic laboratory. No civil liability shall attach to any person authorized to obtain the DNA sample as provided by this section as a result of the act of obtaining the DNA sample from any person, provided the procedure was done according to generally accepted medical procedures.
- (3) The cost of testing shall be paid by the agency or individual making the request for testing.
- (4) Any person who tampers or attempts to tamper with any DNA sample collected under this section or its container without lawful authority shall be guilty of a Class D felony.

Section 92. KRS 17.175 is amended to read as follows:

- (1) A centralized database of DNA (deoxyribonucleic acid) identification records for convicted criminals, crime scene specimens, missing persons, and close biological relatives of missing persons shall be established in the Department of **Kentucky** State Police under the direction, control, and supervision of the **Department of Kentucky** State Police forensic laboratory. The established system shall be compatible with the procedures set forth in a national DNA identification index to ensure data exchange on a national level.
- (2) The purpose of the centralized DNA database is to assist federal, state, and local criminal justice and law enforcement agencies within and outside the Commonwealth in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of sex-related crimes, violent crimes, or other crimes and the identification and location of missing and unidentified persons.
- (3) The Department of **Kentucky** State Police forensic laboratory shall receive, analyze, and classify samples of blood received from the Department of Corrections in compliance with KRS 17.170 and this section, and samples from other sources, and shall file the DNA results in the centralized databases for identification and statistical purposes.
- (4) Records produced from the samples shall be used only for law enforcement purposes and shall be exempt from the provisions of KRS Chapter 61.
- (5) A person whose DNA profile has been included in the data bank pursuant to this chapter may request expungement on the grounds that the felony conviction on which the authority for including the DNA profile was based, has been reversed and the case dismissed. The Department of **Kentucky** State Police shall expunge all identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of:
 - (a) A written request for expungement pursuant to this section; and
 - (b) A certified copy of the court order reversing and dismissing the conviction.
- (6) The Department of **Kentucky** State Police forensic laboratory shall promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system to include procedures for collection of DNA samples and the database system usage and integrity.
- (7) Any person who disseminates, receives, or otherwise uses or attempts to use information in the database, knowing that such dissemination, receipt, or use is for a purpose other than authorized by law, shall be guilty of a Class A misdemeanor.

Section 93. KRS 17.176 is amended to read as follows:

- (1) In addition to the requirements specified in KRS 422.285, any evidence submitted for testing and analysis pursuant to KRS 422.285 or 422.287 shall be of probative value. When the motion is filed with the court requesting testing and analysis of evidence pursuant to this section, the applicant shall include sufficient information about the evidence, the necessity for its testing and analysis, and its applicability to the proceeding for a court to make a determination of the probative value of the evidence proposed to be tested and analyzed.

- (2) The prosecution, with a court order issued pursuant to this section, may submit not more than five (5) items of evidence for testing and analysis by the **Department of** Kentucky State Police *forensic* laboratory or another laboratory selected by the **Department of** Kentucky State Police *forensic* laboratory without charge. The cost of testing and analysis of any items of evidence in excess of the five (5) initial items to be tested and analyzed shall be borne by the agency or person requesting the testing and analysis. Any additional item of evidence submitted for testing and analysis shall be accompanied by the court order specified in subsection (1) of this section.
- (3) The defense, with a court order issued pursuant to this section, may submit not more than five (5) items of evidence for testing and analysis by the **Department of** Kentucky State Police *forensic* laboratory or another laboratory selected by the **Department of** Kentucky State Police *forensic* laboratory without charge. The cost of testing and analysis of any item of evidence in excess of the five (5) initial items to be tested and analyzed shall be borne by the agency or person requesting the testing and analysis. Any additional item of evidence submitted for testing and analysis shall be accompanied by the court order specified in subsection (1) of this section.
- (4) Any other party in a criminal case, with permission of the court after a specific showing of necessity for testing and analysis, together with the items specified in subsection (1) of this section, may submit an item of evidence for testing and analysis by the **Department of** Kentucky State Police *forensic* laboratory or another laboratory selected by the **Department of** Kentucky State Police *forensic* laboratory for testing and analysis. The cost of testing and analysis of any item of evidence permitted to be submitted by the court shall be borne by the person or organization requesting the testing and analysis.
- (5) The **Department of** Kentucky State Police shall promulgate by administrative regulation a uniform schedule of fees to be charged for testing and analysis conducted pursuant to KRS 422.285 or 422.287.

Section 94. KRS 17.177 is amended to read as follows:

- (1) KRS 17.171, 17.172, 17.173, 17.174, 17.176, 422.285, 422.287, and 524.140, and the amendments to KRS 17.170 and 17.175 contained in 2002 Ky. Acts ch. 154, secs. 4 and 9, shall become effective on July 15, 2002.
- (2) Implementation of KRS 17.176, 422.285, 422.287, and 524.140, and of KRS 17.170 as amended by 2002 Ky. Acts ch. 154, sec. 4, shall occur on July 15, 2002; however, actual compliance with the provisions of KRS 17.171, 17.172, 17.173, and 17.174, and of KRS 17.175 as amended by 2002 Ky. Acts ch. 154, sec. 9, may be delayed until funding is available for their full implementation.
- (3) As funding becomes available, KRS 17.171, 17.172, 17.173, and 17.174, and KRS 17.175 as amended by 2002 Ky. Acts ch. 154, sec. 9, shall be implemented in their numerical order. As a section is implemented, the Reviser of Statutes shall be notified by the secretary of justice *and public safety*, in writing, as to the date of implementation. DNA sample collection and testing shall apply to any person meeting the criteria of KRS 17.171, 17.172, 17.173, or 17.174, or KRS 17.175 as amended by 2002 Ky. Acts ch. 154, sec. 9, as of July 15, 2002, and not the date of implementation of the testing.
- (4) Once implementation of a provision of KRS 17.171, 17.172, 17.173, or 17.174, or of KRS 17.175 as amended by 2002 Ky. Acts ch. 154, sec. 9, is begun it shall not be discontinued.

Section 95. KRS 17.180 is amended to read as follows:

- (1) The **Department of** Kentucky State Police shall design, implement, and maintain an automated fingerprint identification system.
- (2) The automated fingerprint identification system shall be compatible with any similar system required by the federal government for inclusion of state information in federal criminal justice databases.
- (3) The Commonwealth shall provide and maintain in every detention center the automated fingerprint identification system equipment and programs required by the **Department of** Kentucky State Police through administrative regulation.

Section 96. KRS 17.450 is amended to read as follows:

- (1) The Justice *and Public Safety* Cabinet shall establish within the cabinet a "Kentucky Missing Child Information Center", which shall serve as a central repository of and clearinghouse for information about Kentucky children believed to be missing and children from other states believed to be missing in Kentucky.

- (2) The cabinet shall provide the Missing Child Information Center with computer equipment and a computer program which shall list and be capable of immediately retrieving the name and complete description of any missing Kentucky child referred to in subsection (1) of this section.
- (3) The cabinet shall design the computer program so as to accept and generate complete information on a missing child, which information shall be retrievable by the child's name and date of birth, social security number, fingerprint classification, any number of physical descriptions, including hair and eye color and body marks, and known associates and locations.
- (4) Only law enforcement agencies shall be authorized to order missing child information entered into or retrieved from the missing child information center computer, except that a parent or guardian may order from the **Department of Kentucky** State Police information on his or her child to be entered or retrieved when another law enforcement agency has refused to enter or retrieve such missing child information.
- (5) The cabinet, through the Kentucky Missing Child Information Center, shall regularly issue flyers containing physical and situational descriptions of missing children when requested by a law enforcement agency or when determined by the cabinet.
- (6) For purposes of this section, child shall mean any person under eighteen (18) years of age or any person certified or known to be mentally incompetent or disabled.
- (7) A complete written report shall be issued annually by the cabinet, which report shall include statistical information on the numbers of missing children entered on the computer and located and recommendations for more accurate and timely reports and better usage of the computer.
- (8) The cabinet may **promulgate administrative**~~issue~~ regulations in conformance with this section which provide for the orderly receipt of missing child information and requests for retrieval of missing child information.
- (9) The **Department of** Kentucky State Police and each city, county, and urban-county police department and each sheriff's office shall fingerprint children without charge on forms provided by the cabinet. The completed fingerprint forms shall be delivered to the child's parent or guardian and no copy of the fingerprint form shall be retained by the police department or sheriff's office.

Section 97. KRS 17.460 is amended to read as follows:

- (1) Upon notification by a parent, guardian, person exercising custodial control or supervision, or the authorized representative of the Department for Community Based Services of the Cabinet for Health and Family Services if the child is a ward of the state, that a child is missing, the law enforcement agency receiving notification shall immediately complete a missing person's report in a form prescribed by the Justice **and Public Safety** Cabinet which shall include information the Justice **and Public Safety** Cabinet deems necessary for the identification of the missing child, including the child's physical description, last known location, and known associates.
- (2) Within twenty-four (24) hours after completion of the missing person's report form, the law enforcement agency shall transmit the report for inclusion within the Kentucky Missing Child Information Center computer and shall cause the report to be entered into the National Crime Information Center computer.
- (3) Within twenty-four (24) hours thereafter, the law enforcement agency shall investigate the report, shall inform all appropriate law enforcement officers of the existence of the missing child report, and shall communicate the report to every other law enforcement agency having jurisdiction in the area.
- (4)
 - (a) Upon location of the missing child and verification of the National Crime Information Center entry, the law enforcement agency shall transport the child to the parent, guardian, or person exercising custodial control or supervision.
 - (b) If the child is a ward of the state, the law enforcement agency shall transport the child to the authorized representative of the Department for Community Based Services of the Cabinet for Health and Family Services in the jurisdiction of the law enforcement agency.
 - (c) If the law enforcement agency is unable to return the child to the appropriate caretaker pursuant to paragraph (a) of this subsection, the law enforcement agency shall contact the court-designated worker with jurisdiction for placement determination.

- (d) If the child is in custody on a charge of committing an offense pursuant to KRS Chapters 600 to 645, the law enforcement agency shall proceed according to the provisions therein.
- (5) Within twenty-four (24) hours after a missing child is located and returned to the appropriate caretaker pursuant to subsection (4) of this section, the law enforcement agency which transported, found, or returned the missing child shall notify both the Missing Child Information Center and the National Crime Information Center of that fact.

Section 98. KRS 17.470 is amended to read as follows:

- (1) Upon receipt of a report of a missing child who was born in the Commonwealth, the **Department of** Kentucky State Police shall notify within forty-eight (48) hours the state registrar of vital statistics for the Commonwealth of the disappearance of such child and shall provide to the state registrar identifying information about the missing child. Upon learning of the recovery of a missing child, the **Department of** Kentucky State Police shall notify the state registrar.
- (2) The **Department of** Kentucky State Police shall provide the commissioner of education with a list of the names of all missing children and children who have been recovered along with, if available, the last known school of enrollment. The commissioner of education shall provide the information to schools as required in KRS 156.495.

Section 99. KRS 17.500 is amended to read as follows:

As used in KRS 17.500 to 17.580:

- (1) "Approved provider" means a mental health professional licensed or certified in Kentucky whose scope of practice includes providing mental health treatment services and who is approved by the Sex Offender Risk Assessment Advisory Board, under administrative regulations promulgated by the board, to provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020;
- (2) "Cabinet" means the Justice **and Public Safety** Cabinet;
- (3) (a) Except as provided in paragraph (b) of this subsection, "criminal offense against a victim who is a minor" means any of the following offenses if the victim is under the age of eighteen (18) at the time of the commission of the offense:
 - 1. Kidnapping, as set forth in KRS 509.040, except by a parent;
 - 2. Unlawful imprisonment, as set forth in KRS 509.020, except by a parent;
 - 3. Sex crime;
 - 4. Promoting a sexual performance of a minor, as set forth in KRS 531.320;
 - 5. Promoting prostitution, as set forth in KRS 529.030, 529.040, and 529.050, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18);
 - 6. Use of a minor in a sexual performance, as set forth in KRS 531.310;
 - 7. Sexual abuse, as set forth in KRS 510.120 and 510.130;
 - 8. Unlawful transaction with a minor in the first degree as set forth in KRS 530.064(1)(a);
 - 9. Any offense involving a minor or depictions of a minor as set forth in KRS Chapter 531;
 - 10. Any attempt to commit any of the offenses described in subparagraphs 1. to 9. of this paragraph; and
 - 11. Solicitation to commit any of the offenses described in subparagraphs 1. to 9. of this paragraph;
- (b) Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense;
- (4) "Law enforcement agency" means any lawfully organized investigative agency, sheriff's office, police unit, or police force of federal, state, county, urban-county government, charter county, city, consolidated local government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws;

- (5) "Registrant" means:
- (a) Any person eighteen (18) years of age or older at the time of the offense or any youthful offender, as defined in KRS 600.020, who has committed:
 - 1. A sex crime; or
 - 2. A criminal offense against a victim who is a minor; or
 - (b) Any person required to register under KRS 17.510; or
 - (c) Any sexually violent predator; or
 - (d) Any person whose sexual offense has been diverted pursuant to KRS 533.250, until the diversionary period is successfully completed;
- (6) "Registrant information" means the name, including any lawful name change together with the previous name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, fingerprints, a photograph, aliases used, residence, a brief description of the crime or crimes committed, and other information the cabinet determines, by administrative regulation, may be useful in the identification of registrants;
- (7) "Residence" means any place where a person sleeps. For the purposes of this statute, a registrant may have more than one (1) residence. A registrant is required to register each residence address;
- (8) "Sex crime" means:
- (a) A felony offense defined in KRS Chapter 510, or KRS 530.020, 530.064(1)(a), 531.310, or 531.320;
 - (b) A felony attempt to commit a felony offense specified in paragraph (a) of this subsection; or
 - (c) A federal felony offense, a felony offense subject to a court-martial of the United States Armed Forces, or a felony offense from another state or a territory where the felony offense is similar to a felony offense specified in paragraph (a) of this subsection;
- (9) "Sexual offender" means any person convicted of, pleading guilty to, or entering an Alford plea to a sex crime as defined in this section, as of the date the verdict is entered by the court;
- (10) "Sexually violent predator" means any person who has been subjected to involuntary civil commitment as a sexually violent predator, or a similar designation, under a state, territory, or federal statutory scheme;
- (11) "The board" means the Sex Offender Risk Assessment Advisory Board created under KRS 17.554; and
- (12) "Victim" has the same meaning as in KRS 421.500.

Section 100. KRS 17.510 is amended to read as follows:

- (1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.
- (2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.
- (3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated, by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, **Department of** Kentucky State Police, Frankfort, Kentucky 40601.
- (4) The court or the official shall order the person to register with the appropriate local probation and parole office which shall obtain the person's fingerprints and the person's photograph. Thereafter, the registrant shall return to the appropriate local probation and parole office not less than one (1) time every two (2) years in order for a new photograph to be obtained, and the registrant shall pay the cost of updating the photo for registration

purposes. Failure to comply with this requirement shall be punished as set forth in subsection (11) of this section.

- (5)
 - (a) The appropriate probation and parole office shall send the registration form containing the registrant information, fingerprint card, and photograph, and any special conditions imposed by the court or the Parole Board, to the Information Services Center, *Department of* Kentucky State Police, Frankfort, Kentucky 40601.
 - (b) The Information Services Center, upon request by a state or local law enforcement agency, shall make available to that agency registrant information, including a person's fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole Board.
 - (c) Any employee of the Justice Cabinet who disseminates, or does not disseminate, registrant information in good faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (6) Any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country, shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.
- (7) If a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register within five (5) working days with the appropriate local probation and parole office in the county of residence, employment, vocation, or schooling. A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.
- (8) The registration form shall be a written statement signed by the person which shall include registrant information, including an up-to-date photograph of the registrant for public dissemination.
- (9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall not be considered an address.
- (10)
 - (a) If the residence address of any registrant changes, but the registrant remains in the same county, the person shall register, on or before the date of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.
 - (b)
 - 1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.
 - 2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) working days after the date of the change of address.
 - (c)
 - 1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.

2. As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection, that office shall forward this information as set forth under subsection (5) of this section.
- (11) Any person required to register under this section who knowingly violates any of the provisions of this section or prior law is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (12) Any person required to register under this section or prior law who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (13) (a) The ~~Justice~~ cabinet shall verify the addresses of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under KRS 17.520(2) and at least once every calendar year for a person required to register under KRS 17.520(3). If the ~~Justice~~ cabinet determines that a person has moved without providing his or her new address to the appropriate local probation and parole office or offices as required under subsection (10)(a) and (b) of this section, the ~~Justice~~ cabinet shall notify the appropriate local probation and parole office of the new address. The office shall then forward this information as set forth under subsection (5) of this section. The ~~Justice~~ cabinet shall also notify the appropriate court, Parole Board, and appropriate Commonwealth's attorney, sheriff's office, probation and parole office, corrections agency, and law enforcement agency responsible for the investigation of the report of noncompliance.
- (b) An agency that receives notice of the noncompliance from the cabinet under paragraph (a) of this subsection:
 1. Shall consider revocation of the parole, probation, or conditional discharge of any person released under its authority; and
 2. Shall notify the appropriate county or Commonwealth's Attorney for prosecution.

Section 101. KRS 17.520 is amended to read as follows:

- (1) A registrant, upon his or her release by the court, the Parole Board, the cabinet, or any detention facility, shall be required to register for a period of time required under this section.
- (2) (a) Lifetime registration is required for:
 1. Any person who has been convicted of kidnapping, as set forth in KRS 509.040, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
 2. Any person who has been convicted of unlawful confinement, as set forth in KRS 509.020, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
 3. Any person convicted of a sex crime:
 - a. Who has one (1) or more prior convictions of a felony criminal offense against a victim who is a minor; or
 - b. Who has one (1) or more prior sex crime convictions;
 4. Any person who has been convicted of two (2) or more felony criminal offenses against a victim who is a minor;
 5. Any person who has been convicted of:
 - a. Rape in the first degree under KRS 510.040; or
 - b. Sodomy in the first degree under KRS 510.070; and
 6. Any sexually violent predator.
- (3) All other registrants are required to register for twenty (20) years following discharge from confinement or twenty (20) years following the maximum discharge date on probation, shock probation, conditional discharge, parole, or other form of early release, whichever period is greater.

- (4) If a person required to register under this section is reincarcerated for another offense or as the result of having violated the terms of probation, parole, or conditional discharge, the registration requirements and the remaining period of time for which the registrant shall register are tolled during the reincarceration.
- (5) A person who has pled guilty, entered an Alford plea, or been convicted in a court of another state or territory, in a court of the United States, or in a court-martial of the United States Armed Forces who is required to register in Kentucky shall be subject to registration in Kentucky based on the conviction in the foreign jurisdiction. The Justice Cabinet shall promulgate administrative regulations to carry out the provisions of this subsection.
- (6) The court shall designate the registration period as mandated by this section in its judgment and shall cause a copy of its judgment to be mailed to the Information Services Center, **Department of** Kentucky State Police, Frankfort, Kentucky 40601.

Section 102. KRS 17.547 is amended to read as follows:

The following shall be immune from suit for good faith conduct under KRS 17.500 to 17.580 and 17.991:

- (1) Law enforcement agencies including the ~~Justice~~ cabinet;
- (2) Independent contractors acting under the direction of law enforcement agencies;
- (3) State and county officials;
- (4) Approved providers, as defined in KRS 17.500; and
- (5) Employees of any of the agencies, entities, and persons identified in subsections (1), (2), (3), and (4) of this section.

Section 103. KRS 17.580 is amended to read as follows:

- (1) The **Department of** Kentucky State Police shall establish a Web site available to the public. The Web site shall display:
 - (a) The registrant information, except for information that identifies a victim, fingerprints, and Social Security numbers, obtained by the Information Services Center, **Department of** Kentucky State Police, under KRS 17.510;
 - (b) The sex offender information, except for information that identifies a victim, Social Security numbers, and vehicle registration data, obtained by the Information Services Center, **Department of** Kentucky State Police, under KRS 17.510 prior to April 11, 2000; and
 - (c) The registrant's conviction, the elements of the offense for which the registrant was convicted, whether the registrant is currently on probation or parole, and whether the registrant is compliant or noncompliant.

The Web site shall be updated every day except for Saturdays, Sundays, and state holidays.

- (2) The information pertaining to an individual shall be maintained on the Web site so long as that individual is registered in accordance with KRS 17.500 to 17.580.
- (3) The following language shall be prominently displayed on the Web site: "UNDER KRS 525.070 AND 525.080, USE OF INFORMATION OBTAINED FROM THIS WEB SITE TO HARASS A PERSON IDENTIFIED ON THIS WEB SITE IS A CRIMINAL OFFENSE PUNISHABLE BY UP TO NINETY (90) DAYS IN THE COUNTY JAIL. MORE SEVERE CRIMINAL PENALTIES APPLY FOR MORE SEVERE CRIMES COMMITTED AGAINST A PERSON IDENTIFIED ON THIS WEB SITE."
- (4)
 - (a) Any **Department of** Kentucky State Police employee who disseminates, or does not disseminate, registrant information or sex offender information in good faith compliance with the requirements of this section shall be immune from criminal and civil liability for the dissemination or lack thereof.
 - (b) Any person, including an employee of a sheriff's office, acting in good faith in disseminating, or not disseminating, information previously disseminated by the **Department of** Kentucky State Police shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (5) The ~~Justice~~ cabinet shall establish a toll-free telephone number for a person to call to learn the identity of the Web site created in this section and the location of public access to the Web site in the county where the person resides.

- (6) In addition to the Web site, a local law enforcement agency may provide personal notification regarding the registrants located in its jurisdiction. Any notification shall contain the warning specified in subsection (3) of this section.

Section 104. KRS 18A.095 is amended to read as follows:

- (1)
 - (a) The provisions of this section shall not apply to employees commissioned pursuant to the provisions of ***Section 281 of this Act***~~[KRS 281.770]~~.
 - (b) Dismissals, demotions, suspensions, and other penalizations of these commissioned employees, and appeals relating thereto, shall be governed by the provisions of ***Sections 282 and 283 of this Act***~~[KRS 281.771 and 281.772]~~.
- (2) A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (3) Prior to dismissal, a classified employee with status shall be notified in writing of the intent to dismiss him. The notice shall also state:
 - (a) The specific reasons for dismissal including:
 1. The statutory or regulatory violation;
 2. The specific action or activity on which the intent to dismiss is based;
 3. The date, time, and place of such action or activity; and
 4. The name of the parties involved; and
 - (b) That the employee has the right to appear personally, or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- (4) The Personnel Cabinet shall prescribe and distribute a form to be completed and forwarded by an employee who wishes to appear before the head of the cabinet or agency or his designee, to each appointing authority. The form shall be attached to every notice of intent to dismiss, and shall contain written instructions explaining:
 - (a) The right granted an employee under the provisions of this section relating to pretermination hearings; and
 - (b) The time limits and procedures to be followed by all parties in pretermination hearings.
- (5) No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day he receives the notice, the employee may request to appear, personally or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- (6) Unless waived by the employee, the appearance shall be scheduled within six (6) working days after receipt of an employee's request to appear before the head of the cabinet or agency or his designee, excluding the day his request is received.
- (7) No later than five (5) working days after the employee appears before the head of the cabinet or agency or his designee, excluding the day of the appearance, the cabinet head or agency or his designee shall:
 - (a) Determine whether to dismiss the employee or to alter, modify, or rescind the intent to dismiss; and
 - (b) Notify the employee in writing of the decision.
- (8) If the cabinet or agency head or his designee determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:
 - (a) The effective date of his dismissal or other penalization;
 - (b) The specific reason for this action, including:
 1. The statutory or regulatory violation;
 2. The specific action or activity on which the dismissal or other penalization is based;
 3. The date, time, and place of the action or activity; and

4. The name of the parties involved;
 - (c) That he may appeal the dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.
- (9) A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:
- (a) The demotion, suspension, or other penalization;
 - (b) The effective date of the demotion, suspension, or other penalization;
 - (c) The specific reason for the action including:
 1. The statutory or regulatory violation;
 2. The specific action or activity on which the demotion, suspension, or other penalization is based;
 3. The date, time, and place of the action or activity; and
 4. The name of the parties involved; and
 - (d) That he has the right to appeal to the board within sixty (60) days, excluding the day that he received notification.
- (10) Any unclassified employee who is dismissed, demoted, suspended, or otherwise penalized for cause may, within thirty (30) days after the dismissal, demotion, suspension, or other form of penalization, appeal to the board for review thereof.
- (11) (a) An employee whose position is reallocated shall be notified in writing by the appointing authority of:
1. The reallocation; and
 2. His right to request reconsideration by the secretary within ten (10) working days of receipt of the notice, excluding the day he receives notification;
- (b) He shall be provided with a form prescribed by the secretary on which to request reconsideration; and
- (c) The employee shall file a written request for reconsideration of the reallocation of his position with the secretary in a manner and form prescribed by the secretary and shall be given a reasonable opportunity to be heard thereon by the secretary. The secretary shall make a determination within sixty (60) days after the request has been filed by an employee. After reconsideration of the request by the secretary, the employee may appeal to the board.
- (12) Any state employee, applicant for employment, or eligible on a register may appeal to the board on the grounds that his right to inspect or copy records, including preliminary and other supporting documentation, relating to him has been denied, abridged, or impeded by a public agency. The board shall conduct a hearing to determine whether the records related to the employee, applicant, or eligible, and whether his right to inspect or copy these records was denied, abridged, or impeded. If the board determines that the records related to the employee and that the right to inspect or copy these records has been denied, abridged, or impeded, the board shall order the public agency to make them available for inspection and copying and shall charge the cost of the hearing to the public agency. A state employee, an applicant for employment, and an eligible on a register shall not have the right to inspect or to copy any examination materials.
- (13) Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age forty (40) and above. Nothing in this section shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.
- (14) When an eligible's name is removed from a register, the secretary shall notify the eligible of his action and the reasons therefor, together with his right of appeal. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the secretary or in accordance with the decision of the board.
- (15) (a) Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board;

- (b) Any applicant whose application for admission to an open-competitive examination has been rejected shall be notified of this rejection and the reasons therefor and may appeal to the board for reconsideration of his qualifications and for admission to the examination. Applicants may be conditionally admitted to an examination by the secretary pending reconsideration by the board;
 - (c) Any applicant who has taken an examination may appeal to the board for a review of his rating in any part of the examination to assure that uniform rating procedures have been applied equally and fairly;
 - (d) An appeal to the board by applicants or eligibles under subsections (11) and (13) of this section and under this subsection shall be filed in writing with the executive director not later than thirty (30) calendar days after the notification of the action in question was mailed.
- (16) An evaluation may be appealed to the board if an employee has complied with the review procedure established in KRS 18A.110(7)(j).
- (17) (a) Appeals to the board shall be in writing on an appeal form prescribed by the board. Appeal forms shall be available at the employee's place of work. The Personnel Cabinet shall be responsible for the distribution of these forms;
- (b) The appeal form shall be attached to any notice, or copy of any notice, of dismissal, demotion, suspension, fine, involuntary transfer, or other penalization, reallocation, or notice of any other action an employee may appeal under the provisions of this section. The appeal form shall instruct the employee to state whether he is a classified or unclassified employee, his full name, his appointing authority, work station address and telephone number, and, if he has retained counsel at the time he files an appeal, the name, address, and telephone number of his attorney;
- (c) The form shall also instruct a classified employee to state the action he is appealing in a short, plain, concise statement of the facts. The form shall instruct an unclassified employee to make a short, plain, concise statement of the reason for the appeal and the cause given for his dismissal; and
- (d) Upon receipt of the appeal by the board, the appointing authority and the Personnel Cabinet shall be notified and the board shall schedule a hearing.
- (18) All administrative hearings conducted by the board shall be conducted in accordance with KRS Chapter 13B.
- (19) (a) The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100;
- (b) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by the investigations and the information shall be presented at the hearing.
- (20) Each appeal shall be decided individually, unless otherwise agreed by the parties and the board. The board shall not:
- (a) Employ class action procedures; or
 - (b) Conduct test representative cases.
- (21) Board members shall abstain from public comment about a pending or impending proceeding before the board. This shall not prohibit board members from making public statements in the course of their official duties or from explaining for public information the procedures of the board.
- (22) An appeal to the board may be heard by the full board or one (1) or more of the following: Its executive director, its general counsel, any nonelected member of the board, or any hearing officer secured by the board pursuant to KRS 13B.030.
- (23) (a) If the board finds that the action complained of was taken by the appointing authority in violation of laws prohibiting favor for, or discrimination against, or bias with respect to, his political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of

such individual's sex or age or disability, the appointing authority shall immediately reinstate the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal;

- (b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal;
 - (c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall direct the appointing authority to alter, modify, or rescind the disciplinary action;
 - (d) In all other cases, the board shall direct the appointing authority to rescind the action taken or otherwise grant specific relief or dismiss the appeal.
- (24) If a final order of the board is appealed, a court shall award reasonable attorney fees to an employee who prevails by a final adjudication on the merits as provided by KRS 453.260. This award shall not include attorney fees attributable to the hearing before the board.
 - (25) When any employee is dismissed and not ordered reinstated after the appeal, the board in its discretion may direct that his name be placed on an appropriate reemployment list for employment in any similar position other than the one from which he had been removed.
 - (26) After a final decision has been rendered by the board or court, an employee who prevails in his appeal shall be credited with the amount of leave time used for time spent at his hearing before the board or court. Employees who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at their hearings before the board or court.
 - (27) If the appointing authority appeals the final order of the board, unless the board rules otherwise, the reinstated employee shall remain in his former position, or a position of like status or pay, until the conclusion of the appeals process, at which time the appointing authority shall take action in accordance with the court order.
 - (28) For the purposes of subsections (3), (4), (5), (6), (7), and (8) of this section, the word "agency" means any agency not assigned to a cabinet for organizational purposes.
 - (29) Notwithstanding any other prescribed limitation of action, an employee that has been penalized, but has not received a written notice of his or her right to appeal as provided in this section, shall file his or her appeal with the Personnel Board within one (1) year from the date of the penalization or from the date that the employee reasonably should have known of the penalization.

Section 105. KRS 18A.115 is amended to read as follows:

- (1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise all positions in the state service now existing or hereafter established, except the following:
 - (a) The General Assembly and employees of the General Assembly, including the employees of the Legislative Research Commission;
 - (b) Officers elected by popular vote and persons appointed to fill vacancies in elective offices;
 - (c) Members of boards and commissions;
 - (d) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the Secretary of the Governor's Cabinet, and the Office of Program Administration;
 - (e) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television and the executive director and deputy executive director of the Education Professional Standards Board;
 - (f) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television, which shall have sole authority over such exempt employees for employment, dismissal, and setting of compensation, up to the maximum established for the executive director and his principal assistants;
 - (g) One (1) principal assistant or deputy for each person exempted under subsection (1)(e) of this section;

- (h) One (1) additional principal assistant or deputy as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the commissioner approves such an addition on petition of the relevant cabinet secretary or department head and such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the board may approve such an addition or additions on petition of the department head approved by the commissioner;
- (i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;
- (j) Physicians employed as such;
- (k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;
- (l) The judicial department, referees, receivers, jurors, and notaries public;
- (m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;
- (n) Patients or inmates employed in state institutions;
- (o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;
- (p) Interim employees;
- (q) Officers and members of the state militia;
- (r) ***Department of Kentucky*** State Police troopers ~~and sworn officers in the Department of State Police, Justice Cabinet~~;
- (s) University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the commissioner or shall be participants in a cooperative education program approved by the commissioner;
- (t) Superintendents of state mental institutions, including heads of mental retardation centers, and penal and correctional institutions as referred to in KRS 196.180(2);
- (u) Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;
- (v) County and Commonwealth's attorneys and their respective appointees;
- (w) Chief district engineers and the state highway engineer;
- (x) Veterinarians employed as such by the Kentucky Horse Racing Authority;
- (y) Employees of the Kentucky Peace Corps;
- (z) Employees of the Council on Postsecondary Education;
- (aa) Executive director of the Commonwealth Office of Technology;
- (ab) Employees of the Kentucky Commission on Community Volunteerism and Service;
- (ac) Persons employed in certified teaching positions at the Kentucky School for the Blind and the Kentucky School for the Deaf; and
- (ad) Federally funded time-limited employees as defined in KRS 18A.005.

- (2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.
- (3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.
- (4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.
- (5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.
- (6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.
- (7) On August 15, 2000, all certified and equivalent personnel, all unclassified personnel, and all certified and equivalent and unclassified vacant positions in the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B personnel system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. The personnel officers who administer the personnel systems under KRS Chapter 151B and KRS Chapter 18A shall exercise the necessary administrative procedures to effect the change in personnel authority. No certified or equivalent employee in the Department for Adult Education and Literacy shall suffer any penalty in the transfer.
- (8) On August 15, 2000, secretaries and assistants attached to policymaking positions in the Department for Technical Education and the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. No employee shall suffer any penalty in the transfer.

Section 106. KRS 18A.450 is amended to read as follows:

Nothing in KRS 18A.400 to 18A.450 shall prohibit the commissioner of the Department of Workforce Investment or the commissioner of the Department of **Kentucky** State Police from developing pilot programs consistent with the provisions of KRS 18A.400 to 18A.450. To the extent that pilot programs are approved by these agencies, in no event shall the total number employees participating in these programs statewide exceed twenty percent (20%) of the permanent, full-time state employees employed on July 15, 1994.

Section 107. KRS 21A.090 is amended to read as follows:

- (1) At the request of the Chief Justice, the Governor may provide through the **Department of** Kentucky State Police such security personnel and services for the Supreme Court and Court of Appeals as shall be necessary.
- (2) When the Chief Justice, in his discretion, believes that local law enforcement personnel should be supplemented or superseded by the State Police, the Governor may provide through the **Department of** Kentucky State Police the necessary security personnel and services for any person or facility in the Court of Justice.
- (3) **Department of** Kentucky State Police officers serving the Court of Justice pursuant to subsection (1) or (2) of this section shall have statewide authority when performing any duty related to the Court of Justice.

Section 108. KRS 23A.206 is amended to read as follows:

- (1) For the purposes of this section:
 - (a) "Local government" means a city, county, charter county, urban-county, or consolidated local government; and
 - (b) "Police department" means a police department created by a local government which employs one or more officers certified pursuant to KRS 15.380 to 15.404.
- (2) In criminal cases a fee of twenty dollars (\$20) shall be added to the costs imposed by KRS 23A.205 that the defendant is required to pay.
- (3) The circuit clerk shall pay the funds from fees collected under this section to the Finance and Administration Cabinet pursuant to KRS 23A.215 for distribution as provided in subsection (5) of this section to local governments with police departments or local governments that contract for police services, and to counties with fiscal responsibilities for jails or the transporting of prisoners.
- (4) All funds distributed to local governments shall be used for payment of expenses for operation of the local government's police department or contracted police services. All funds distributed to counties with fiscal responsibilities for jails or the transporting of prisoners shall be used for the payment of costs associated with the housing or transporting of prisoners.
- (5) Payments shall be distributed quarterly by the Finance and Administration Cabinet beginning October 1, 2004, as follows:
 - (a) Thirty percent (30%) of the total shall be distributed equally to all local governments with police departments or that contract for police services;
 - (b) Fifty percent (50%) of the total shall be distributed to local governments with police departments or local governments that contract for police services on a per capita basis according to the number of certified police officers employed by the police department on July 1 each year or providing services to the local government pursuant to a contract on July 1 of each year. For purposes of this subsection, each local government that contracts for police services shall be considered to employ one (1) police officer for each sixty thousand dollars (\$60,000) it expends during each fiscal year for police services under a written contract; and
 - (c) Twenty percent (20%) of the total shall be distributed equally to counties with fiscal responsibilities for jails or the transporting of prisoners.
- (6) On or before August 1 of each year, the Justice *and Public Safety* Cabinet shall certify to the Finance and Administration Cabinet the number of certified police officers employed by each local government.
- (7) On or before August 1 of each year, each local government contracting for police services shall certify to the Finance and Administration Cabinet the amount of money expended for police services under a written contract during the previous fiscal year.
- (8) The Finance and Administration Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A deemed necessary for the administration of this section.

Section 109. KRS 24A.176 is amended to read as follows:

- (1) For the purposes of this section:
 - (a) "Local government" means a city, county, charter county, urban-county, or consolidated local government; and
 - (b) "Police department" means a police department created by a local government which employs one (1) or more officers certified pursuant to KRS 15.380 to 15.404.
- (2) In criminal cases a fee of twenty dollars (\$20) shall be added to the costs imposed by KRS 24A.175 that the defendant is required to pay.
- (3) The circuit clerk shall pay the funds from fees collected under this section to the Finance and Administration Cabinet pursuant to KRS 24A.175 for distribution as provided in subsection (5) of this section to local

governments with police departments or local governments that contract for police services, and to counties with fiscal responsibilities for jails or the transporting of prisoners.

- (4) All funds distributed to local governments shall be used for payment of expenses for operation of the local government's police department or contracted police services. All funds distributed to counties with fiscal responsibilities for jails or the transporting of prisoners shall be used for the payment of costs associated with the housing or transporting of prisoners.
- (5) Payments shall be distributed quarterly by the Finance and Administration Cabinet beginning October 1, 2004, as follows:
 - (a) Thirty percent (30%) of the total shall be distributed equally to all local governments with police departments or local governments that contract for police services;
 - (b) Fifty percent (50%) of the total shall be distributed to local governments with police departments on a per capita basis according to the number of certified police officers employed by the police department on July 1 each year or providing services to the local government pursuant to a contract on July 1 of each year. For purposes of this subsection, each local government that contracts for police services shall be considered to employ one (1) police officer for each sixty thousand dollars (\$60,000) it expends during each fiscal year for police services under a written contract; and
 - (c) Twenty percent (20%) of the total shall be distributed equally to counties with fiscal responsibilities for jails or the transporting of prisoners.
- (6) On or before August 1 of each year, the Justice *and Public Safety* Cabinet shall certify to the Finance and Administration Cabinet the number of certified police officers employed by each local government.
- (7) On or before August 1 of each year, each local government contracting for police services shall certify to the Finance and Administration Cabinet the amount of money expended for police services under a written contract during the previous fiscal year.
- (8) The Finance and Administration Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A necessary for the administration of this section.

Section 110. KRS 27A.080 is amended to read as follows:

- (1) The Administrative Office of the Courts shall be the primary repository of court records of juveniles charged with, arrested for, and against whom complaints have been filed, involving status offenses, public offenses, and youthful offender proceedings, together with all court records of the handling and disposition of those cases, and shall keep and maintain these records.
- (2) The Administrative Office of the Courts shall make juvenile records available to the agencies and persons specified by law.
- (3) All courts, law enforcement agencies, prosecutors, the Department of Juvenile Justice, the Cabinet for Health and Family Services, the Justice *and Public Safety* Cabinet, *except the Department of Public Advocacy*, and other agencies holding records coming within the purview of subsection (1) of this section shall make them available to the Administrative Office of the Courts in the manner and at the times specified by the Administrative Office of the Courts.

Section 111. KRS 27A.090 is amended to read as follows:

- (1) In any instance that the Justice *and Public Safety* Cabinet is required by statute to conduct a criminal records or background check, the Justice Cabinet may contract with the Administrative Office of the Courts to perform that service.
- (2)
 - (a) Except as provided in paragraph (b) of this subsection, the Administrative Office of the Courts shall set a reasonable fee for a criminal records check conducted by the office in an amount no greater than the actual cost of conducting that criminal records check.
 - (b) When another statute sets the dollar amount of the fee charged for a criminal records check conducted by the Administrative Office of the Courts, the office shall charge that fee.
- (3) The Administrative Office of the Courts shall be required to accept a criminal records check request only when the request is made:
 - (a) By letter, electronic mail, or facsimile transmission; or

(b) In person.

- (4) The Administrative Office of the Courts may establish an escrow account for a person who frequently requests that the office conduct criminal records checks.

Section 112. KRS 27A.092 is amended to read as follows:

- (1) The Administrative Office of the Courts shall support the responsibilities of the Department of **Kentucky** State Police in the administration of KRS 237.110 by providing information:
 - (a) Possessed by the courts with regard to the suitability of an applicant for a license under KRS 237.110; and
 - (b) Possessed by the courts which may result in the revocation or suspension of a license issued pursuant to KRS 237.110.
- (2) The Administrative Office of the Courts shall transmit information regarding a licensee which may result in the revocation or suspension of a license issued pursuant to KRS 237.110 as soon as practicable.
- (3) The Administrative Office of the Courts shall not conduct a National Instant Criminal Background Check System (NICS) check for the Department of **Kentucky** State Police.
- (4) For purposes of conducting the continual background check on licensees pursuant to KRS 237.110, the Department of **Kentucky** State Police may provide a list of licensees to the Administrative Office of the Courts. The list of persons holding a license pursuant to KRS 237.110 shall be held confidential by the Administrative Office of the Courts and shall be used only for purposes specified in this section and KRS 237.110. Information regarding licensees or applicants for a license shall be transmitted only to the Department of **Kentucky** State Police and shall not be distributed to any other person or organization within or without the Administrative Office of the Courts or the Court of Justice. The provisions of this section shall not be construed to prohibit or limit the distribution of information to or about any person which is authorized to be distributed by law, but the fact that the person is an applicant for or holds a license pursuant to KRS 237.110 shall not be distributed.

Section 113. KRS 27A.300 is amended to read as follows:

The Administrative Office of the Courts shall, in cooperation with the **Department of** Kentucky State Police, the Department of Juvenile Justice, the Cabinet for Health and Family Services, and the Department of Corrections, be responsible for the recording of those data elements that are needed for development of the centralized criminal history record information system:

- (1) The database shall at a minimum contain the information contained in KRS 27A.310 to 27A.440;
- (2) The Administrative Office of the Courts shall provide access to the **Department of** Kentucky State Police, the Department of Juvenile Justice, the Cabinet for Health and Family Services, and the Department of Corrections to its database; and
- (3) The Administrative Office of the Courts shall, where the number is known, assign the same identification number or other variable to each person whose name appears in the database.

Section 114. KRS 29A.180 is amended to read as follows:

- (1) The sheriff, city police, or city marshal, as appropriate, shall be responsible for meals, housing, and other incidental needs of grand jurors and petit jurors in Circuit Court and in District Court when the jurors are kept overnight or otherwise sequestered when ordered to do so by the judge of the court for which the jurors were summoned. The expenses for these services shall be borne by the Finance and Administration Cabinet and the officer shall be reimbursed in accordance with administrative regulations issued by the Finance and Administration Cabinet, pursuant to KRS Chapter 13A.
- (2) The sheriff, city police, or city marshal, as appropriate, shall be responsible for the transportation of jurors and other authorized persons to views of the scene or other locations authorized by the court pursuant to KRS 29A.310. In criminal cases the expenses for these services shall be borne by the Finance and Administration Cabinet and the sheriff shall be reimbursed in accordance with administrative regulations issued by the Finance and Administration Cabinet, pursuant to KRS Chapter 13A. Excepting views conducted under the Eminent Domain Act of Kentucky, in civil cases these expenses shall be paid by the party requesting the viewing.

- (3) The sheriff, city police, or city marshal, as appropriate, shall be responsible for providing any specialized security personnel, equipment, and services which the judge, with the consent of the Chief Justice, shall deem necessary for the conduct of a trial in which the judge believes that special security precautions are necessary or desirable. The expenses for these services shall be borne by the Finance and Administration Cabinet and the officer shall be reimbursed in accordance with administrative regulations issued by the Finance and Administration Cabinet, pursuant to KRS Chapter 13A. In such cases, the judge may also request the Chief Justice to provide the services of the *Department of* Kentucky State Police to ensure proper security precautions relating to the case.

Section 115. KRS 31.010 is amended to read as follows:

There is hereby established as an independent agency of state government, attached for administrative purposes to the *Justice and Public Safety*~~Environmental and Public Protection~~ Cabinet, the Department of Public Advocacy, in order to provide for the establishment, maintenance, and operation of a state sponsored and controlled system for:

- (1) The representation of indigent persons accused of crimes or mental states which may result in their incarceration or confinement; and
- (2) The pursuit of legal, administrative, and other appropriate remedies to insure the protection of the rights of persons with disabilities. For the purposes of this chapter, "persons with disabilities" shall refer to those persons eligible for protection and advocacy services under Public Laws 99-319, 102-569, 103-218, 106-170, and 106-402 as amended and any other federal enabling statute hereafter enacted that defines the eligible client base for protection and advocacy services.

Section 116. KRS 31.015 is amended to read as follows:

- (1) (a) The Public Advocacy Commission shall consist of the following members, none of whom shall be a prosecutor, law enforcement official, or judge, who shall serve terms of four (4) years, except the initial terms shall be established as hereafter provided:
 1. Two (2) members appointed by the Governor;
 2. One (1) member appointed by the Governor. This member shall be a child advocate or a person with substantial experience in the representation of children;
 3. One (1) member who is the executive director of the *Office of Legislative and Intergovernmental Services*~~Criminal Justice Council~~ of the *Justice and Public Safety* Cabinet;
 4. Two (2) members appointed by the Kentucky Supreme Court;
 5. Two (2) members, who are licensed to practice law in Kentucky and have substantial experience in the representation of persons accused of crime, appointed by the Governor from a list of three (3) persons submitted to him for each individual vacancy by the board of governors of the Kentucky Bar Association;
 6. The dean, ex officio, of each of the law schools in Kentucky or his designee; and
 7. One (1) member appointed by the Governor from a list of three (3) persons submitted to him or her by the joint advisory boards of the Protection and Advocacy Division of the Department of Public Advocacy.
- (b) Any member of the commission serving prior to July 15, 2002, shall serve until the expiration of his or her current term of office. Subsequent appointments shall be for a term of four (4) years from the date of expiration of the term for which his or her predecessor was appointed.
- (2) At the first meeting of the commission, a drawing by lot shall be conducted to determine the length of each original member's term. Initially there shall be four (4) two (2) year terms, four (4) three (3) year terms, and four (4) four (4) year terms. Vacancies in the membership of the commission shall be filled in the same manner as original appointments. Appointments to fill vacancies occurring before the expiration of a term shall be for the remainder of the unexpired term.
- (3) The commission shall first meet at the call of the Governor and thereafter as the commission shall determine on a regular basis, but at least quarterly, and shall be presided over by a chairperson elected by its members for a one (1) year term. A majority of commission members shall constitute a quorum, and decisions shall require the majority vote of those present; except that a recommendation to the Governor pertaining to the

appointment, renewal of the appointment, or removal of the public advocate shall require a majority vote of the commission. Each member of the commission shall have one (1) vote, and voting by proxy shall be prohibited.

- (4) The public advocate shall, upon appointment or renewal, be an ex officio member of the commission without *the power to* vote, shall serve as secretary of the commission, and shall be entitled to attend and participate in all meetings of the commission except discussions relating to renewal of his term or his removal.
- (5) Commission members shall be reimbursed for reasonable and necessary expenses incurred while engaged in carrying out the duties of the commission and shall receive one hundred dollars (\$100) per day for each meeting attended unless prohibited by law from receiving such compensation.
- (6) The commission shall:
 - (a) Receive applications, interview, and recommend to the Governor three (3) attorneys as nominees for appointment as the public advocate;
 - (b) Assist the public advocate in drawing up procedures for the selection of his staff;
 - (c) Review the performance of the public advocacy system and provide general supervision of the public advocate;
 - (d) Assist the Department of Public Advocacy in ensuring its independence through public education regarding the purposes of the public advocacy system; and
 - (e) Review and adopt an annual budget prepared by the public advocate for the system and provide support for budgetary requests to the General Assembly.
- (7) In no event shall the commission or its members interfere with the discretion, judgment, or advocacy of employees of the Department of Public Advocacy in their handling of individual cases.

Section 117. KRS 32.070 is amended to read as follows:

Beginning July 1, 1976, or at such earlier date as may be fixed as hereinafter provided, grand jurors, petit jurors and persons summoned for jury service in Circuit Court eligible for payment of the compensation designated in KRS 29A.170(1) shall be paid, in addition thereto, the sum of seven dollars and fifty cents (\$7.50) per day as reimbursement of expenses incurred, which sum is hereby determined to be the equivalent of the minimum daily expenses reasonably to be incurred by such juror or person. Payment of such reimbursement for expenses may be made beginning as of such date prior to July 1, 1976, but not prior to July 1, 1974, as may be fixed by the Governor upon recommendation of the secretary of justice *and public safety* if and to the extent that prior to July 1, 1976, the Commonwealth of Kentucky is awarded grant funds by the Law Enforcement Assistance Administration of the United States Department of Justice on a matching basis of not less than ninety percent (90%) federal funds and ten percent (10%) state funds which grant funds are sufficient to pay the full cost of the reimbursement of expenses, and of the administrative expenses related thereto, authorized by this section from the date so fixed through June 30, 1976. Eligible state funds appropriated for the 1974-1976 biennium may be used for matching purposes so long as such use does not reduce the level of services provided in the executive budget for that biennium.

Section 118. KRS 35.010 is amended to read as follows:

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

- (1) "National Guard" means the Kentucky Army National Guard and the Kentucky Air National Guard;
- (2) "Active militia" means a volunteer defense unit other than the National Guard;
- (3) "Officer" means a commissioned officer, including a warrant officer;
- (4) "Superior commissioned officer" means a commissioned officer superior in rank or command;
- (5) "Enlisted person" means any person who is serving in an enlisted grade in any force of the National Guard or active militia;
- (6) "State active duty" means full-time military duty in the active service of the state under an order of the Governor, including travel to and from the duty;
- (7) "Military court" means a court-martial, a court of inquiry, a provost court, or a military commission;

- (8) "Military judge" means an official of general and special courts-martial detailed in accordance with KRS 35.125;
- (9) "Subject person" means person subject to this chapter;
- (10) "Code" means this chapter;
- (11) "Commissioned officer" includes a commissioned warrant officer;
- (12) "Commanding officer" includes only commissioned officers;
- (13) "Grade" means a step or degree in a graduated scale of office or military rank that is established by law or regulation;
- (14) "Rank" means order of precedence among members of the National Guard or active militia;
- (15) "Duty status" includes state active duty and any other type of state military duty, including travel to and from the duty;
- (16) "State judge advocate" means the commissioned officer responsible for supervising the administration of military justice in the National Guard or active militia;
- (17) "Accuser" means a person who signs and swears to charges, any person who directs that charges normally be signed and sworn to by another, and any person who has an interest other than an official interest in the prosecution of the accused;
- (18) "Military" refers to any or all of the Armed Forces;
- (19) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being or a successor in command; and
- (20) "Peace officer" as used in this chapter means any sheriff, deputy sheriff, constable, deputy constable, sworn police officer, sworn enforcement officer of the **Department of** Kentucky State Police or other duly authorized state law enforcement agency, and other persons with similar authority to make arrests under the provisions of the Kentucky Revised Statutes.

Section 119. KRS 36.255 is amended to read as follows:

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

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

Section 120. KRS 36.400 is amended to read as follows:

As used in KRS 36.400 to 36.425, unless the context otherwise requires:

- (1) "Division of Air Transport" includes the Capital City Airport;
- (2) "State aircraft" means aircraft owned by the Commonwealth, leased by the Commonwealth, or otherwise under the control of the Commonwealth and administratively assigned to the Division of Air Transport. It shall also include air charters by the division. However, this shall not include or apply to any and all aircraft assigned to, owned, leased, operated, or controlled by the Department of **Kentucky** State Police, or otherwise under the control or direction of the Department of **Kentucky** State Police. The operation, maintenance, scheduling, and care of Department of **Kentucky** State Police aircraft shall not be included under or affected by KRS 36.400 to 36.425; and
- (3) "Official business" means any activity involving travel in a state aircraft if the activity is reasonably required, expected, or appropriate, considering the nature of the using public official's job responsibilities. The activities shall include, but not be limited to, attendance by officials at nonpartisan ceremonial functions and events where their appearance is normally expected by virtue of their office or where official representation of the Commonwealth is otherwise appropriate, and to nonpolitical flights by the Governor and members of his immediate family when accompanying or representing him.

Section 121. KRS 39E.030 is amended to read as follows:

- (1) The commission shall be composed of not more than twenty-five (25) members and shall be chaired by the director of the Division of Emergency Management of the Department of Military Affairs, who shall also be a member. Other members shall include, but not be limited to, the executive director of the Commission on Fire Protection Personnel Standards and Education or the executive director's designee, representatives of the Environmental and Public Protection Cabinet, the office of the state fire marshal, the **Department of Kentucky** State Police, the Office of the Attorney General, affected industry, local government, health services, environmental interests, and other persons who have technical expertise in the emergency response field as the Governor deems appropriate.
- (2) Members of the commission shall be appointed by the Governor. All appointments shall be for a term of two (2) years. Members shall serve until their successors are appointed and qualified and shall be eligible for reappointment.
- (3) The commission shall meet not less than semi-annually, or as convened by the chairman.

- (4) If a member misses three (3) consecutive meetings of the full commission or three (3) meetings in two (2) consecutive years, the position shall be declared vacant by the commission. In these cases, the Governor shall make an appointment to fill the unexpired term.
- (5) The presence of thirteen (13) members shall constitute a quorum and actions taken at these meetings shall be considered as actions of the full commission.
- (6) Members of the commission shall not receive a salary for serving on the commission, but travel and per diem may be paid if funds are appropriated or otherwise made available for these purposes.

Section 122. KRS 39F.180 is amended to read as follows:

- (1) All 911 centers and dispatch centers, law enforcement agencies, law enforcement dispatchers, fire departments, rescue squads, emergency medical service agencies, and emergency management agencies shall report the information required to be reported by administrative regulation, for all reports of persons missing, lost, or overdue, if a search for the lost person has lasted for more than two (2) hours to:
 - (a) The local emergency management director; and
 - (b) The local search and rescue coordinator for the jurisdiction in which the person is reported missing.
- (2)
 - (a) Any search for a missing minor, as that term is defined in KRS 2.015, shall be reported to the **Department of** Kentucky State Police by the person or organization to whom the missing minor is reported.
 - (b) A search for a person who is known or reported to have an organic brain disorder, including but not limited to Alzheimer's disease, shall immediately be reported to the local emergency management director, local search and rescue coordinator if different from the local emergency manager, and the duty officer of the Division of Emergency Management by the person managing the search or by the organization conducting the search. The provisions of this section do not apply to any licensed long-term health care provider conducting a search for a missing resident until the provider requests a search by a person or organization specified in subsection (1) of this section.
 - (c) The making of this report does not relieve the person or organization from the duty to make other notifications and reports required in this section.
- (3) Any search and rescue mission which has lasted four (4) hours without the subject being located, shall be immediately reported to the duty officer of the Division of Emergency Management by telephone or radio.
- (4) The results of each lost, missing, or overdue person report or search mission required to be reported under subsections (1) to (3) of this section shall be reported to the division and the local director on forms provided by the division and containing the information required by administrative regulation. The report shall be filed within twenty (20) days after:
 - (a) The search and rescue mission is discontinued; or
 - (b) The victim has not been found and a decision is made to keep the case open or continue searching on a limited basis, whichever occurs earlier.
- (5) Each agency required to notify a local emergency management director or the division of a report of a missing person, or a search mission pursuant to this section shall develop a written standard operating procedure for handling and reporting requests to search for missing, lost, or overdue persons. This standard operating procedure shall be a public record.
- (6) The contents of reports, information to be conveyed upon notification, and other matters relating to the administration of this section and the securing of information required hereby shall be specified by the division by administrative regulations.
- (7) There is no requirement in Kentucky to delay the search for or rescue of any lost, missing, or overdue person. Any person who is reported lost, missing, or overdue, adult or child, may be searched for immediately by any emergency management, fire, law enforcement, emergency medical services, search and rescue, rescue squad, or other similar organization to which a missing or overdue person is reported. No public safety answering point, emergency dispatch center, or 911 center shall delay any call reporting a person lost, overdue, or missing to the organization specified in the county search and rescue annex of the county emergency management plan as responsible for searching for lost, missing, or overdue persons.

Section 123. KRS 42.320 is amended to read as follows:

- (1) There is hereby established the court cost distribution fund, which is created to provide a central account into which the court costs collected by all circuit clerks, under KRS 23A.205(1) and 24A.175(1), shall be paid.
- (2) The fund shall be administered by the Finance and Administration Cabinet, which shall make monthly disbursements from the fund according to the following schedule:
 - (a) Forty-nine percent (49%) of each court cost shall be paid into the general fund;
 - (b) Ten and eight-tenths percent (10.8%) of each court cost, up to five million four hundred thousand dollars (\$5,400,000), shall be paid into the State Treasury for the benefit and use of the Kentucky Local Correctional Facilities Construction Authority under KRS 441.605 to 441.695;
 - (c) Six and one-half percent (6.5%) of each court cost, up to three million two hundred fifty thousand dollars (\$3,250,000), shall be paid into the spinal cord and head injury research trust fund created in KRS 211.504;
 - (d) Five and one-half percent (5.5%) of each court cost, up to two million seven hundred fifty thousand dollars (\$2,750,000), shall be paid into the traumatic brain injury trust fund created in KRS 211.476;
 - (e) Five percent (5%) of each court cost, up to two million five hundred thousand dollars (\$2,500,000), shall be paid into a trust and agency account with the Administrative Office of the Courts and is to be used by the circuit clerks to hire additional deputy clerks and to enhance deputy clerk salaries;
 - (f) Three and one-half percent (3.5%) of each court cost, up to one million seven hundred fifty thousand dollars (\$1,750,000), shall be paid to a special trust and agency account that shall not lapse for the Department of Public Advocacy;
 - (g) Three and four-tenths percent (3.4%) of each court cost, up to one million seven hundred thousand dollars (\$1,700,000), shall be paid into the crime victims' compensation fund created in KRS 346.185;
 - (h) Seven-tenths of one percent (0.7%) of each court cost, up to three hundred fifty thousand dollars (\$350,000), shall be paid to the Justice *and Public Safety* Cabinet to defray the costs of conducting record checks on prospective firearms purchasers pursuant to the Brady Handgun Violence Prevention Act and for the collection, testing, and storing of DNA samples;
 - (i) Ten and one-tenth percent (10.1%) of each court cost, up to five million fifty thousand dollars (\$5,050,000), deposited in the fund shall be paid to the county sheriff in the county from which the court cost was received; and
 - (j) Five and one-half percent (5.5%) of each court cost, up to two million seven hundred fifty thousand dollars (\$2,750,000), deposited in the fund shall be paid to the county treasurer in the county from which the court cost was received and shall be used by the fiscal court in that county for the purposes of defraying the costs of operation of the county jail and the transportation of prisoners.
- (3) Any moneys remaining in the fund after the monthly disbursements in subsection (2) of this section shall be paid into the general fund.
- (4) Any moneys collected above the prescribed amount shall be paid into the general fund.

Section 124. KRS 44.045 is amended to read as follows:

- (1) A passenger motor vehicle or vehicles may be purchased by the Finance and Administration Cabinet for the use of the Governor and the Lieutenant Governor.
- (2) Motor vehicles, including passenger motor vehicles, may be purchased by the Finance and Administration Cabinet as are deemed necessary by the secretary of the Finance and Administration Cabinet or by the secretary of the Transportation Cabinet for the discharge of the authorized duties and functions of the various agencies of the state. The vehicles shall be used for official purposes only, and for no other purposes. The assignment of passenger motor vehicles to specific individuals shall be discouraged, but may be made upon approval by the secretary of the Finance and Administration Cabinet of a written request to make the assignment by the head of the agency involved.

- (3) All motor vehicles purchased pursuant to this section shall be issued official license plates and shall bear on one (1) door on each side the great seal of the Commonwealth, and the words "For official use only." It shall not be necessary that the vehicles purchased pursuant to subsections (1), (4), and (5) of this section bear the seal and the words.
- (4) The Revenue and Justice *and Public Safety* Cabinets and the Department of Law ~~and the Crime Commission~~ may, upon approval by the secretary of the Finance and Administration Cabinet of a written request by the head of the agency involved, register a vehicle or vehicles under KRS 186.020 and be issued regular license plates. The vehicles shall be used for investigatory purposes only, and for no other purposes.
- (5) The Administrative Office of the Courts may register a vehicle or vehicles used by Justices and Judges of the Supreme Court and Court of Appeals under KRS 186.020 and be issued regular license plates.
- (6) The secretary of the Transportation Cabinet may adopt administrative regulations pursuant to KRS Chapter 13A necessary to govern the use of those state-owned vehicles acquired pursuant to the provisions of this section.
- (7) Any person violating subsections (2) and (4) of this section shall, on conviction thereof, be subject to the penalties prescribed in KRS 44.990.

Section 125. KRS 45.239 is amended to read as follows:

- (1) The Court of Justice shall initiate, by October 1, 2004, fully implement by October 1, 2005, and thereafter maintain a system for tracking and identifying debts.
- (2) The Court of Justice shall establish and operate a system for collecting debt.
- (3) In establishing the systems required by this section, the Court of Justice shall consider technology that could assist in the accurate, timely, and efficient delivery of payments of debts.
- (4) The Court of Justice, Justice *and Public Safety* Cabinet, and the Department of Revenue shall collaborate to implement a system, if feasible, to identify and collect debts in existence prior to the implementation date of the system required by subsection (1) of this section. Confidential information shared among these entities to identify and collect debts shall not be divulged to any unauthorized person. Debts collected under this subsection shall be reported annually and designated separately as part of the report required pursuant to KRS 45.238 beginning on October 1, 2005, and ending with the report filed on or before October 1, 2009.
- (5) The Court of Justice, Justice *and Public Safety* Cabinet, and Department of Revenue shall collaborate to implement a system, if feasible, to identify and collect liquidated debts in existence prior to the implementation date of the system required by subsection (1) of this section. Confidential information shared among these entities to identify and collect debts shall not be divulged to any unauthorized person. Debts collected under this subsection shall be reported annually to the Legislative Research Commission beginning on October 1, 2005, and ending with the report filed on or before October 1, 2009.

Section 126. KRS 45.253 is amended to read as follows:

- (1) Revolving accounts may be established by appropriation in a branch budget bill to finance activities which are self-supporting in whole or in part.
- (2) Trust and agency accounts may be established by a branch budget bill to receive and disburse contributions, gifts, donations, devises, and federal appropriations, and, when authorized by law, by depositing all of the fees (which include fees for maintenance in state institutions, incidental fees, tuition fees, fees for board and room, athletics, and student activities), rentals, admittance, sales, licenses collected by law, subventions, and other miscellaneous receipts of budget units.
- (3) The head of the budget unit or other responsible fiscal agent of the unit for which a revolving, trust, or agency account has been established shall deposit with the State Treasury all receipts of the character above described, and the Finance and Administration Cabinet shall credit all receipts to the budget unit and shall keep separate accounting for each account so established.
- (4) The amounts credited to any revolving, trust, or agency account so provided, shall be held available for disbursement for the purpose provided by law and shall not be diverted to any other purpose. Revolving, trust, or agency accounts shall be subject to withdrawal from the State Treasury by the head of each budget unit when actually needed, on requisition to the Finance and Administration Cabinet in the same manner provided by law as other state funds are withdrawn. Funds received from the federal government in the form of grants or

otherwise may be expended for the purpose intended even though received in a fiscal year other than that in which the related original encumbrance or expenditure was incurred. Trust and agency funds shall be allotted before an expenditure is made; and the secretary of the Finance and Administration Cabinet may withhold allotment of general fund appropriations to the extent trust and agency funds are available.

- (5) Subject to prior approval by the secretary of the Finance and Administration Cabinet, the Chief Justice, and the Legislative Research Commission for their respective branches, any budget unit which, as an incident to its authorized duties and functions, furnishes requested services or materials to any persons outside state government, where such services or materials are not required by law to be furnished gratuitously, may charge such persons an amount not to exceed the total expense to the budget unit of the services or materials furnished. The receipts from the approved charges shall be credited to the surplus account of the general fund. Payroll deductions for the *Department of* Kentucky State Police legal fund shall be made without any service fees or charges.
- (6) The Commonwealth Office of Technology may charge any agency of local government an amount, not to exceed the total expense to the department, for services rendered or materials furnished at the request of the local government agency, unless the services or materials are required by law to be furnished gratuitously. The receipts from the authorized charges shall be deposited in the State Treasury and credited to the trust and agency fund, the Commonwealth Office of Technology's operating account.
- (7) All receipts which accrue as the result of the Commonwealth Office of Technology's providing on-line computer access to public records by nongovernment entities shall be deposited in the State Treasury and credited to the trust and agency fund, the Commonwealth Office of Technology's operating account.

Section 127. KRS 56.491 is amended to read as follows:

- (1) No state agency shall have power or authority to make plans and specifications, provide public notice of invitations for bids, let contracts, or incur any financing commitments, either in the way of a charge against public funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal or water supply system, requiring the expenditure of more than two hundred thousand dollars (\$200,000) without first securing the approval of the Finance and Administration Cabinet.
- (2) The state agency seeking the approval shall submit to the Finance and Administration Cabinet a general description of the proposed project, with the detailed information the cabinet may require. Review of construction plans for conformance with the Uniform State Building Code shall be conducted by the Office of Housing, Buildings and Construction. The Finance and Administration Cabinet shall not approve any project requiring its approval in any instance if it finds that: the project is not needed; the proposed method of financing is not sound; the project will exceed the amount of the funds available therefor; the work contemplated will be insufficient to accomplish the purpose of the project; or after providing for the ordinary recurring expenses of government and debt service and for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the State Treasury to promptly pay for the work during the biennium, or except as provided in subsection (5) of this section, that the work is to be done by employees of the agency.
- (3) The finding of the Finance and Administration Cabinet shall be final, except in cases where the issuance and sale of bonds is proposed, in which cases the cabinet shall submit its findings to the commission for final approval, modification, or disapproval.
- (4) Any capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will exceed two hundred thousand dollars (\$200,000), shall be contracted for on a competitive bid basis, and the execution of the contracts shall be approved and authorized by the cabinet. When a capital construction project has been approved as provided in this section, in whole or in part, the cabinet shall prepare the plans and specifications, provide public notice of invitations for bids, award the contracts, supervise the construction, and handle the financial negotiations on behalf of the requesting state agency; or with prior written approval, the cabinet may authorize a state agency to do so with delegated authority of the cabinet.
- (5) A capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will not exceed two hundred thousand dollars (\$200,000), may be performed by the employees of the requesting agency or by individuals hired specifically for the project who shall be exempt from the

requirements of KRS Chapter 18A, if the project is approved and authorized by the cabinet. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the cabinet as defined in KRS Chapter 45A.

- (6) This section shall not apply to capital outlays to the Department of Highways for roads and bridges.
- (7) This section shall not apply to capital outlays by the Justice *and Public Safety* Cabinet for repair, maintenance, improvement, or expansion of present correctional facilities on which projects inmates are used. Any capital construction project to be performed by the Justice *and Public Safety* Cabinet shall be approved and authorized by the Finance and Administration Cabinet.
- (8) This section shall not apply to surveys capable of being performed by employees of the Department of Fish and Wildlife Resources. Boundary surveys or surveys involving property lines shall be performed by or under the supervision of an employee possessing a professional land surveyor license.

Section 128. KRS 61.315 is amended to read as follows:

- (1) As used in this section, "police officer" means every paid police officer, sheriff, or deputy sheriff, corrections employee with the power of a peace officer pursuant to KRS 196.037, any auxiliary police officer appointed pursuant to KRS 95.445, or any citation or safety officer appointed pursuant to KRS 83A.087 and 83A.088, elected to office, or employed by any county, airport board created pursuant to KRS Chapter 183, city, or by the state; "firefighter" means every paid firefighter or volunteer firefighter who is employed by or volunteers his *or her* services to the state, airport board created pursuant to KRS Chapter 183, any county, city, fire district, or any other organized fire department recognized, pursuant to KRS 95A.262, as a fire department operated and maintained on a nonprofit basis in the interest of the health and safety of the inhabitants of the Commonwealth and shall include qualified civilian firefighters employed at Kentucky-based military installations.
- (2) The spouse of any police officer, sheriff, deputy sheriff, corrections employee with the power of a peace officer pursuant to KRS 196.037, any auxiliary police officer appointed pursuant to KRS 95.445, or any citation or safety officer appointed pursuant to KRS 83A.087 and 83A.088, firefighter, or member of the Kentucky National Guard on state active duty pursuant to KRS 38.030, or a member of a state National Guard or a Reserve component on federal active duty who names Kentucky as home of record for military purposes, whose death occurs on or after July 1, 2002, as a direct result of an act in the line of duty shall receive a lump-sum payment of eighty thousand dollars (\$80,000) if there are no surviving children, which sum shall be paid by the State Treasurer from the general expenditure fund of the State Treasury. If there are surviving children and a surviving spouse, the payment shall be apportioned equally among the surviving children and the spouse. If there is no surviving spouse, the payment shall be made to the surviving children, eighteen (18) or more years of age. For surviving children less than eighteen (18) years of age, the State Treasurer shall:
 - (a) Pay thirty-five thousand dollars (\$35,000) to the surviving children; and
 - (b) Hold forty-five thousand dollars (\$45,000) in trust divided into equal accounts at appropriate interest rates for each surviving child until the child reaches the age of eighteen (18) years.

If a child dies before reaching the age of eighteen (18) years, his *or her* account shall be paid to his *or her* estate. If there are no surviving children, the payment shall be made to any parents of the deceased.

- (3) The Commission on Fire Protection Personnel Standards and Education shall be authorized to promulgate administrative regulations establishing criteria and procedures applicable to the administration of this section as it pertains to both paid and volunteer firefighters, including, but not limited to, defining when a firefighter has died in line of duty. Administrative hearings promulgated by administrative regulation under authority of this subsection shall be conducted in accordance with KRS Chapter 13B.
- (4) The Justice *and Public Safety* Cabinet may promulgate administrative regulations establishing criteria and procedures applicable to the administration of this section as it pertains to police officers, including, but not limited to, defining when a police officer has died in line of duty. Administrative hearings promulgated by administrative regulation under authority of this subsection shall be conducted in accordance with KRS Chapter 13B.
- (5) The Department of Corrections shall promulgate administrative regulations establishing the criteria and procedures applicable to the administration of this section as it pertains to correctional employees, including, but not limited to, defining which employees qualify for coverage and which circumstances constitute death in the line of duty.

- (6) The benefits payable under this section shall be in addition to any benefits now or hereafter prescribed under any police, sheriff, firefighter's, volunteer firefighter's, or National Guard or Reserve retirement or benefit fund established by the federal government or by any state, county, or any municipality.
- (7) Any funds appropriated for the purpose of paying the death benefits described in subsection (2) of this section shall be allotted to a self-insuring account. These funds shall not be used for the purpose of purchasing insurance.

Section 129. KRS 61.362 is amended to read as follows:

- (1) Any public police department, sheriff's office, or the ***Department of*** Kentucky State Police may, upon written agreement with a residential property owner or a residential property owners' association, patrol the roadways and parking lots of private residential communities within the jurisdiction of the public police department, sheriff's office, or the ***Department of*** Kentucky State Police and enforce the traffic and motor vehicle laws of the Commonwealth of Kentucky and local traffic and motor vehicle ordinances, on that residential private property.
- (2) This section shall not permit a public police department, sheriff's office, or the ***Department of*** Kentucky State Police to enforce the private rules or regulations of the residential property owner.
- (3) This section shall not limit any peace officer from coming on residential private property for the enforcement of the law, provided that the entry upon residential private property is consistent with the provisions of the Constitution of the United States, the Constitution of Kentucky, the Kentucky Revised Statutes, and applicable court decisions.

Section 130. KRS 61.387 is amended to read as follows:

- (1) All conspicuously marked motor vehicles used by ***the Department of*** Kentucky State Police, sheriffs' departments, county police, urban-county police, and city police for transporting prisoners, which are conspicuously marked as law enforcement vehicles, shall be equipped with a screen or other protective device between the area where prisoners are transported and the driver of the vehicle, and the area in which the prisoner is enclosed shall be equipped so that the doors and windows cannot be opened from the inside of the vehicle.
- (2) Subsection (1) of this section shall not apply to vehicles used for investigative purposes nor to special purpose vehicles not normally used for the transportation of prisoners.

Section 131. KRS 61.553 is amended to read as follows:

A Kentucky Employees Retirement System member's work performed in the Department of ***Kentucky*** State Police or its predecessor agency, the State Highway Patrol, prior to July 1, 1956, shall be creditable as prior service in the Kentucky Employees Retirement System if the member has not received prior service credit in the State Police Retirement System for such period of work. The purpose of this section is to grant prior service credit to state employees who cannot obtain such credit under the State Police Retirement System because of the maximum State Police employment age established by KRS 16.520.

Section 132. KRS 61.900 is amended to read as follows:

As used in KRS 61.902 to 61.930:

- (1) "Commission" means a commission issued to an individual by the secretary of justice ***and public safety***, entitling the individual to perform special law enforcement duties on public property;
- (2) "Council" means the Kentucky Law Enforcement Council;
- (3) "Cabinet" means the Justice ***and Public Safety*** Cabinet;
- (4) "Public property" means property currently owned or used by any organizational unit or agency of state, county, city, metropolitan government, or a combination of these. The term shall include property currently owned or used by public airport authorities;
- (5) "Secretary" means the secretary of the Justice ***and Public Safety*** Cabinet;
- (6) "Special law enforcement officer":

- (a) Means one (1) whose duties include the protection of specific public property from intrusion, entry, larceny, vandalism, abuse, intermeddling, or trespass;
- (b) Means one (1) whose duties include the prevention, observation, or detection of, or apprehension for, any unlawful activity on specific public property;
- (c) Means one (1) whose special duties include the control of the operation, speed, and parking of motor vehicles, bicycles, and other vehicles, and the movement of pedestrian traffic on specific public property;
- (d) Means one (1) whose duties include the answering of any intrusion alarm on specific public property;
- (e) Shall include the Capitol police, the Capital Plaza police, public school district security officers, public airport authority security officers, and the officers of the other public security forces established for the purpose of protecting specific public property; and
- (f) Shall not include members of a lawfully organized police unit or police force of state, county, city, or metropolitan government, or a combination of these, who are responsible for the detection of crime and the enforcement of the general criminal law enforcement of the state; it shall not include any of the following officials or officers:
 - 1. Sheriffs, sworn deputy sheriffs, city marshals, constables, sworn deputy constables, and coroners;
 - 2. Auxiliary and reserve police appointed under KRS 95.160 or 95.445, or citation and safety officers authorized by KRS 83A.087 and 83A.088;
 - 3. State park rangers and officers of the Division of Law Enforcement within the Department of Fish and Wildlife Resources;
 - 4. Officers of the Transportation Cabinet responsible for law enforcement;
 - 5. Officers of the Department of Corrections responsible for law enforcement;
 - 6. Fire marshals and deputy fire marshals;
 - 7. Other officers not mentioned above who are employed directly by state government and are responsible for law enforcement;
 - 8. Federal peace officers;
 - 9. Those campus security officers who are commissioned under KRS 164.950;
 - 10. Private security guards, private security patrolmen, and investigators licensed pursuant to state statute; and
 - 11. Railroad policemen covered by KRS 277.270 and 277.280; and
- (7) "Sworn public peace officer" means one (1) who derives plenary or special law enforcement powers from, and is a full-time employee of, the federal government, the Commonwealth, or any political subdivision, agency, department, branch, or service of either, or of any municipality.

Section 133. KRS 61.902 is amended to read as follows:

The secretary of the Justice *and Public Safety* Cabinet may commission special law enforcement officers, for such time as he *or she* deems necessary, to protect and to enforce the law on public property. Upon application of a unit or agency of state, county, city or metropolitan government, the secretary may appoint those persons recommended by the unit or agency who satisfy the requirements of KRS 61.900 to 61.930.

Section 134. KRS 61.904 is amended to read as follows:

KRS 61.900 to 61.930 shall be administered by the secretary, or by any agency within the ~~Justice~~ cabinet designated by the secretary and acting under his authority. The secretary shall ~~make,~~ promulgate~~,~~ and enforce such *administrative* ~~rules, orders,~~ regulations~~, and instructions,~~ as may be reasonable and necessary to carry out the provisions of KRS 61.900 to 61.930. The secretary may appoint such employees, and delegate such duties to the same, as he *or she*, in his *or her* sound discretion, deems appropriate.

Section 135. KRS 62.160 is amended to read as follows:

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

Secretary of State	\$10,000
Attorney General	10,000
State Treasurer	300,000
Secretary for economic development	10,000
Commissioner of Agriculture	10,000
Secretary for education	10,000
Auditor of Public Accounts	25,000
Adjutant general	10,000
Secretary of finance and administration	100,000
Commissioner of revenue	50,000
Secretary of transportation	50,000
Commissioner of highways	50,000
Secretary of justice <i>and public safety</i>	50,000
Secretary of corrections	25,000
Commissioner for public health services	10,000
Commissioner of labor	5,000
Commissioner for natural resources	50,000
State librarian	5,000
Executive director of alcoholic beverage control	10,000
Executive director of financial institutions	25,000
Secretary for environmental and public protection	10,000
Executive director of insurance	50,000
Commissioner of vehicle regulation	10,000
Commissioner of fish and wildlife resources	5,000
Secretary for health and family services	20,000
Commissioner of environmental protection	10,000
Commissioner of public protection and regulation	10,000
Secretary of commerce	25,000
Commissioner for community based services	20,000
Member of the Public Service Commission	10,000
Member of State Fair Board	10,000

Member of Fish and Wildlife Resources Commission	1,000
Member of Kentucky Board of Tax Appeals	10,000
Associate member of Alcoholic Beverage Control Board	5,000
Commissioner of local government	100,000

Section 136. KRS 62.170 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet shall secure, except for state officers required by KRS 62.160 to file bond, blanket bonds, with or without cosureties, written on a blanket position form, to cover all other officers, employees, or deputies of the Commonwealth of Kentucky, including all judges, clerks, and employees of the Court of Justice, including all other members of boards or commissions or employees of those boards or commissions, and including all superintendents, receivers, or employees of penal or eleemosynary institutions managed or directed by the Justice *and Public Safety* Cabinet, the Cabinet for Health and Family Services, or any other department or agency of the Commonwealth of Kentucky. Nothing in this paragraph shall be deemed to prohibit the securing of any such blanket position bond on a departmental, board, commission, agency, or institutional basis.
- (2) The secretary of the Finance and Administration Cabinet may secure one (1) or more excess blanket bonds, with or without cosureties, to cover selected groups of persons covered by the bond or bonds required in the preceding paragraph to provide additional coverage which he *or she* may deem necessary by the exposures indicated in accordance with the duties and responsibilities indicated by the personnel classification schedules of the Personnel Cabinet and, for Court of Justice officers and personnel, by the Administrative Office of the Courts and in accordance with the amounts of money and property handled by the respective officers and employees.
- (3) Such bond or bonds shall be written by and participated in only by insurance companies licensed by the Office of Insurance to do business in this state and shall be countersigned by a duly authorized licensed resident agent of the company. The bonds may be written with or without cosureties. Further, the bonds are to be a percentage of the total risks, the Office of Insurance to approve the amount of the risk written by any one (1) company.
- (4) The penal amount of the bond secured pursuant to this section shall be fixed by the secretary of the Finance and Administration Cabinet in accordance with the duties and responsibilities indicated by the personnel classification schedules of the Personnel Cabinet and, for Court of Justice officers and personnel, by the Administrative Office of the Courts, and in accordance with the amounts of money and property handled by the respective officers and employees.

Section 137. KRS 64.090 is amended to read as follows:

- (1) Sheriffs may charge and collect the following fees from the Commonwealth and any of its agencies, including the Department of *Kentucky* State Police, when the source of payment is not otherwise specified, if the Commonwealth, any of its agencies, or the Department of *Kentucky* State Police makes a request that the sheriff perform any of the following:
 - (a) Executing and returning process \$20.00;
 - (b) Serving an order of court and return 3.00;
 - (c) Summoning or subpoenaing each witness, fee to be paid by requester
to sheriff before service 10.00;
 - (d) Summoning an appraiser or reviewer 2.00;
 - (e) Attending a surveyor, when ordered by a
court, per deputy or sheriff assigned 20.00;
 - (f) Taking any bond that he is authorized or
required to take in any action 5.00;
 - (g) Collecting money under execution or distress warrant, if the debt is paid or the property sold, or a delivery bond given and not complied with, six percent (6%) on the first three hundred dollars (\$300) and three percent (3%) on the residue; when he *or she* levies an execution or distress warrant, and the

- defendant replevies the debt, or the writ is stayed by legal proceedings or by the order of the plaintiff, half of the above commissions, to be charged to the plaintiff and collected as costs in the case;
- (h) Taking a recognizance of a witness 3.00;
 - (i) Levying an attachment 5.00;
 - (j) When property attached is sold by an officer other than the officer levying the attachment, the court shall, in the judgment, make the officer an additional and reasonable allowance for levying the attachment, and the fee of the officer selling the property shall be lessened by that sum. Reasonable charges for removing and taking care of attached property shall be allowed by order of court;
 - (k) Summoning a garnishee 3.00;
 - (l) Summoning a jury in a misdemeanor case, attending the trial, and
conducting the defendant to jail, to be paid by the party
convicted 8.00;
 - (m) Serving process or arresting the party in
misdemeanor cases, to be paid by the plaintiff 30.00;
 - (n) Serving an order or process of revivor 3.00;
 - (o) Executing a writ of possession against each tenant or defendant 7.00;
 - (p) Executing a capias ad satisfaciendum, the same commission as collecting money on execution. If the debt is not paid, but stayed or secured, half commission;
 - (q) Summoning and attending a jury in a case of forcible entry and
detainer, besides fees for summoning witnesses 8.00;
 - (r) Collecting militia fines and fee-bills, ten percent (10%), to be deducted out of the fee-bill or fine;
 - (s) Levying for a fee-bill 3.00;
 - (t) Serving a notice 2.00;
 - (u) Serving summons, warrants or process of arrest in cases of
children born out of wedlock 6.00;
 - (v) Serving a civil summons in a nonsupport case 10.00;
 - (w) Serving each order appointing surveyors of
roads, to be paid out of the county levy 5.00;
 - (x) Serving each summons or order of court in applications concerning
roads, to be paid out of the county levy if the road is established,
and in all other cases to be paid by the applicant 5.00;
 - (y) Like services in cases of private passways to
be paid by the applicant 5.00;
 - (z) Executing each writ of habeas corpus, to be
paid by the petitioner 3.00;
 - (aa) All services under a writ issued under
KRS 381.460 to 381.570 10.00; and
 - (bb) For services in summoning grand and petit jurors and performing his *or her* duties under KRS Chapter 29A the sheriff shall be allowed, for each person so summoned, and paid out of the State Treasury for constructive service the sum of \$1.50 and for personal service the sum of \$3.00.

- (2) Sheriffs may charge and collect a fee of forty dollars (\$40) from any person not requesting the service of the sheriff on behalf of the Commonwealth, any of its agencies, or the Department of **Kentucky** State Police for the services provided in subsection (1) of this section where a percentage, commission, or reasonable fee is not otherwise allowed. If a percentage, commission, or reasonable fee is allowed, that amount shall be paid. If payment is specified from a person other than the person who requested the service, then the person specified shall be responsible for payment.

Section 138. KRS 64.185 is amended to read as follows:

- (1) Coroners shall receive out of the county or urban-county treasury, whichever is appropriate, the monthly compensation the fiscal court of each county shall fix, subject to the following minimums:

	County Population	Monthly Minimum Compensation
(a)	10,000 or less	\$ 200
(b)	10,001 to 20,000	300
(c)	20,001 to 40,000	350
(d)	40,001 to 60,000	400
(e)	60,001 to 100,000	450
(f)	100,001 to 150,000	800
(g)	150,001 or more	1,000

Coroners who hold a current certificate of continuing education, issued jointly by the Department of Criminal Justice Training, Justice **and Public Safety** Cabinet, and the ~~Office~~~~Division~~ of ~~the~~ Kentucky State Medical ~~Examiner~~~~Examiners Office~~, Justice **and Public Safety** Cabinet, shall be paid the following minimum monthly compensation set forth in this subsection in recognition of the training:

	County Population	Monthly Minimum Compensation
(a)	10,000 or less	\$ 400
(b)	10,001 to 20,000	500
(c)	20,001 to 40,000	650
(d)	40,001 to 60,000	750
(e)	60,001 to 100,000	850
(f)	100,001 to 150,000	1,100
(g)	150,001 or more	1,300

- (2) Deputy coroners, who hold a current certificate of continuing education, as described in subsection (1) of this section, shall receive out of the county or urban-county treasury, whichever is appropriate, the monthly compensation the fiscal court of each county shall fix, subject to the following minimums:

	County Population	Monthly Minimum Compensation
(a)	10,000 or less	\$200
(b)	10,001 to 20,000	250
(c)	20,001 to 40,000	275
(d)	40,001 to 60,000	300
(e)	60,001 to 100,000	400
(f)	100,001 to 150,000	900

(g) 150,001 or more 1,100

- (3) The fiscal court of any county, urban-county, or charter county government, may compensate coroners and deputy coroners an additional amount of up to three hundred dollars (\$300) per month as an expense allowance.
- (4) The initial course of continuing education required under subsection (1) of this section shall consist of a basic training course prescribed by the Justice *and Public Safety* Cabinet. Annually thereafter the coroner shall attend and successfully complete at least eighteen (18) hours of approved training in order to be compensated in accordance with subsection (1) of this section.
- (5) If a deputy coroner assumes the office of coroner after receiving the training stipulated in this section, the deputy coroner shall be compensated in accordance with the compensation schedule set forth in subsection (1) of this section.
- (6) The number of deputy coroners in a county shall not exceed one (1) for each twenty-five thousand (25,000) inhabitants, or fraction thereof, according to the most recent federal census, but every coroner may, subject to fiscal court approval, appoint two (2) deputy coroners, regardless of population.

Section 139. KRS 65.133 is amended to read as follows:

- (1) Each local law enforcement agency and the Department of *Kentucky* State Police shall each have the responsibility for enforcing the provisions of sex offender registration laws.
- (2) Law enforcement agencies may enter into written agreements for joint investigation and enforcement of violations of sex offender registration laws. These agreements may include other local law enforcement agencies and may include the Department of *Kentucky* State Police.

Section 140. KRS 65.7623 is amended to read as follows:

- (1) There is hereby created the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky, the "CMRS Board," consisting of ten (10) members, appointed by the Governor as follows: two (2) members shall be employed by or representative of the interest of CMRS providers, of which, one (1) shall be a representative of a Tier III CMRS provider; one (1) member shall be a mayor of a city of the first or second class or urban-county government or his or her designee containing a public safety answering point; one (1) member shall be appointed from a list of local exchange landline telephone companies' representatives submitted by the Kentucky Telephone Association; one (1) member shall be a director of a certified public safety answering point operated by a local governmental entity or a consolidated group of local governmental entities appointed from lists of candidates submitted to the Governor by the Kentucky Firefighters Association, the State Association of Chiefs of Police, and the Kentucky Ambulance Providers Association; two (2) members shall be appointed from lists of candidates submitted to the Governor by the Kentucky Emergency Number Association and the Association of Public Communications Officials; and one (1) member shall be a director of a certified public safety answering point operated by a local government entity or a consolidated group of local governmental entities. The commissioner of the *Department of Kentucky* State Police, or the commissioner's designee, and the CMRS emergency telecommunications administrator also shall be members of the board. Any vacancy on the board shall be filled in the same manner as the original appointment.
- (2) The commissioner and administrator shall serve by virtue of their office. The other members shall be appointed no later than August 15, 1998, for a term of four (4) years and until their successors are appointed and qualified, except that of the first appointments, one (1) shall be for a term of one (1) year, one (1) shall be for a term of two (2) years, one (1) for a term of three (3) years, and two (2) shall be for a term of four (4) years. Any member missing three (3) consecutive meetings may be removed by a majority vote of the remaining voting members.
- (3) In addition to the administrator, the Kentucky Office of Homeland Security shall provide staff services and carry out administrative duties and functions as directed by the board. The board shall be attached to the Kentucky Office of Homeland Security for administrative purposes only and shall operate as an independent entity within state government.
- (4) The board members shall serve without compensation but shall be reimbursed in accordance with KRS 45.101 for expenses incurred in connection with their official duties as members of the board.

- (5) All administrative costs and expenses incurred in the operation of the board, including payments under subsection (4) of this section, shall be paid from that portion of the CMRS fund that is authorized under KRS 65.7631 to be used by the board for administrative purposes.

Section 141. KRS 67.592 is amended to read as follows:

- (1) The county judge/executive shall designate the sheriff of the county, or, if there is a county police department, may designate the chief of the county police, as custodian of all property:
 - (a) Alleged to be or suspected of being the proceeds of crime;
 - (b) Alleged to be or suspected of having been used to facilitate the commission of a crime;
 - (c) Which is subject to confiscation or forfeiture, excluding property subject to forfeiture pursuant to KRS Chapter 218A, or both, under any provision of the Kentucky Revised Statutes;
 - (d) Which is taken from the person of a prisoner, except for any personal property that may be in the custody of a prisoner upon his *or her* admission to jail, in which case all property which he *or she* is not permitted to retain upon admission to jail shall be placed in the custody of the jailer;
 - (e) Which is lost or abandoned and taken into custody by any peace officer, or the courts; or
 - (f) Which is taken from persons supposed to be insane, intoxicated, or otherwise incapable of taking care of themselves.
- (2) Any peace officer, except for the **Department of** Kentucky State Police, or court having custody of the property shall, as soon as practicable, deliver it into the custody of the property clerk.
- (3) The sheriff or chief of county police designated as custodian of property shall appoint from persons on his *or her* staff, or may employ, a person to serve as property clerk and other persons necessary as deputy property clerks.
- (4) All the property shall be particularly described and registered by the property clerk, or his *or her* deputy, in a book kept for that purpose, containing the name of the owner, if ascertained, the place where found, the name of the person from whom it was taken, with the general circumstances of its receipt, the name of the officer recovering the property, the names of all claimants to the property, and any final disposition of the property. The property clerk shall advertise the property, if it is not the subject of a forfeiture proceeding, as to the amount and disposition of the property.
- (5) The fiscal court of the county may prescribe regulations in regard to the duties of the property clerk and his *or her* deputies, and require security for the faithful performance of the duties imposed by this section.
- (6) All animals stolen, strayed, lost, or confiscated that come into the possession of the property clerk shall be sent to an animal shelter located within the county, if there is one, or if there is none to an animal shelter in another county.
- (7) No property shall be delivered to the property clerk or his *or her* deputy except as provided in this section.
- (8) No property shall be disposed of by the property clerk or his *or her* deputy except in the manner prescribed by law.
- (9) The provisions of this section shall apply in all unincorporated areas of a county and in all cities which do not appoint a property custodian pursuant to KRS 95.845.

Section 142. KRS 72.210 is amended to read as follows:

In enacting legislation establishing **an Office of the**~~a Division of~~ Kentucky State Medical **Examiner**~~Examiners Office~~ for the Commonwealth of Kentucky, it is not the intention of the General Assembly to abolish or interfere with the coroner in his role as a constitutionally elected peace officer. It is the intention of the General Assembly for the office to aid, assist, and complement the coroner in the performance of his duties by providing medical assistance to him in determining causes of death.

Section 143. KRS 72.220 is amended to read as follows:

The Justice **and Public Safety** Cabinet shall, within budgetary limitation, provide medical assistance to coroners in investigating deaths; provide or contract for laboratory facilities for performing autopsies and investigations pursuant to KRS 72.210 to 72.275; provide for the keeping of reports of all investigations and examinations; and provide such

other functions and duties as may be specified in KRS 72.210 to 72.275 or in the ~~administrative rules and~~ regulations of the secretary of justice **and public safety**.

Section 144. KRS 72.225 is amended to read as follows:

An advisory commission is hereby established to act in a general advisory capacity to the medical examiner services. The commissioner of ~~the Department of Kentucky~~ State Police, the commissioner of **criminal justice** training, the secretary of justice **and public safety**, and the secretary for health and family services shall be ex officio members of the advisory commission. The secretary of justice **and public safety** shall appoint five (5) additional members for terms of four (4) years each or until their successors are appointed and qualify. Members of the advisory commission shall receive no compensation for their services but shall be repaid their actual expenses incurred in attending meetings.

Section 145. KRS 72.235 is amended to read as follows:

The Justice **and Public Safety** Cabinet may establish or contract for physical facilities for the conduct of post-mortem and other necessary examinations. The cabinet may employ, by contract or otherwise, pathologists, toxicologists and other ancillary, technical and administrative personnel to perform autopsies and such other pathological, chemical and other studies and examinations as may be deemed necessary. Such studies and examinations may be performed in another state if deemed to be in the best interest of the Commonwealth by the chief medical examiner or the certified coroner or deputy coroner and the reports thereof shall have the same validity and admissibility in evidence as those performed within this state when duly certified by the chief medical examiner of the cabinet or by a certified coroner or deputy coroner.

Section 146. KRS 72.240 is amended to read as follows:

- (1) The Justice **and Public Safety** Cabinet may employ a board certified forensic pathologist as the chief medical examiner who shall administer the ~~Office~~~~Division~~ of ~~the~~ Kentucky State Medical ~~Examiner~~~~Examiners Office~~ and one (1) associate chief medical examiner for the Commonwealth. ~~[The chief medical examiner and the associate chief medical examiner shall be affiliated with the state medical schools.]~~
- (2) The Justice **and Public Safety** Cabinet may employ physicians licensed to practice medicine in Kentucky as county or district medical examiners to carry out the provisions of KRS 72.210 to 72.275 within the counties or district to which they are assigned by the medical examiner section. The cabinet may designate county or district health officers as county or district medical examiners and may authorize additional compensation therefor.

Section 147. KRS 72.255 is amended to read as follows:

The secretary of justice **and public safety** shall adopt ~~administrative rules and~~ regulations to carry out the provisions of KRS Chapter 72 including but not limited to the adoption of forms, fees for examinations, certification requirements, reports of medical examiners and certified coroners, and other costs incidental to the administration of this chapter. The advisory commission provided for in KRS 72.225 shall review and may recommend new regulations or changes in the regulations provided for in this section.

Section 148. KRS 72.260 is amended to read as follows:

The secretary of justice **and public safety** is authorized to establish a schedule of fees for issuing duplicate records of investigations, examinations, autopsies, and other records; provided, however, that one (1) copy shall be provided free of charge to the coroner and either the county or Commonwealth's attorney concerned.

Section 149. KRS 72.275 is amended to read as follows:

Anyone participating in good faith pursuant to KRS 72.210 to 72.275 or the ~~administrative rules and~~ regulations of the secretary of justice **and public safety** shall have immunity from any civil liability that might otherwise be incurred or imposed.

Section 150. KRS 72.400 is amended to read as follows:

In enacting legislation relating to coroners, the General Assembly recognizes that the coroner is an elected constitutional peace officer. The General Assembly also recognizes that the ascertainment of the cause and manner of death in cases in which the coroner has jurisdiction is an essential governmental service. It is the intent of KRS 72.410 to 72.470 to encourage the coroner to participate in approved training sessions to improve his skills for the

Commonwealth and to cooperate with the ~~Office~~~~[Division]~~ of ~~the~~ Kentucky State Medical ~~Examiner~~~~[Examiners Office]~~ administered by the Justice *and Public Safety* Cabinet.

Section 151. KRS 72.405 is amended to read as follows:

As used in KRS 72.410 to 72.470, unless the context clearly indicates otherwise:

- (1) "Coroner ordered autopsy" means an autopsy ordered by the coroner having jurisdiction and performed by a pathologist pursuant to such authorization in order to ascertain the cause and manner of death in a coroner's case. In the event the pathologist deems it necessary, he may submit the appropriate specimen to a qualified chemist or toxicologist for analysis to assist him in ascertaining the cause of death in a coroner's case.
- (2) "Coroner's case" means a case in which the coroner has reasonable cause for believing that the death of a human being within his county was caused by any of the conditions set forth in KRS 72.025.
- (3) "Inquest" means an examination ordered by the coroner, or in his absence, ordered by a deputy coroner, into the causes and circumstances of any death which is a coroner's case by a jury of six (6) residents of the county impaneled and selected by the coroner to assist him in ascertaining the cause and manner of death.
- (4) "Post-mortem examination" means a physical examination of the body by a medical examiner or by a coroner or deputy coroner who has been certified by the Justice *and Public Safety* Cabinet and may include an autopsy performed by a pathologist or other appropriate scientific tests administered to determine cause of death.
- (5) "Certified coroner" or "certified deputy coroner" means a coroner or deputy coroner who has been certified by the Justice *and Public Safety* Cabinet to have successfully completed both the basic training course and annual inservice training course required by KRS 72.415, except that a deputy coroner shall be certified without completion of training courses required by KRS 72.415 if he is a licensed physician. The secretary of justice *and public safety* may waive the requirement for basic training and certify a coroner during the eighteen (18) month period after July 15, 1982, if the advisory commission set forth in KRS 72.225 certifies to the secretary after a thorough review that the experience and knowledge of the specific coroner is such that he is qualified to be a certified coroner without taking the basic training.

Section 152. KRS 72.410 is amended to read as follows:

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

Section 153. KRS 72.415 is amended to read as follows:

- (1) For the purpose of enforcing the provisions of KRS 72.410 to 72.470, coroners and deputy coroners shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths, to enter upon public or private premises for the purpose of making investigations, to seize evidence, to interrogate persons, to require the production of medical records, books, papers, documents, or other evidence, and to impound vehicles involved in vehicular deaths, employ special investigators and photographers, and to expend funds for the purpose of carrying out the provisions of KRS 72.410 to 72.470. The fiscal court or urban-county government shall pay all reasonable

expenses incurred by the coroner and his deputy in carrying out his responsibilities under the provisions of KRS 72.410 to 72.470.

- (2) No person shall be eligible to hold the office of deputy coroner unless he holds a high school diploma or its recognized equivalent. Every deputy coroner, other than a licensed physician, shall be required as a condition of office to take during every calendar year he *or she* is in office the training course of at least eighteen (18) hours provided by the Department of Criminal Justice Training or other courses approved by the Justice *and Public Safety* Cabinet after having completed the basic training course the first year of employment. The training course shall include material developed by the cabinet and approved by the Cabinet for Health and Family Services on the human immunodeficiency virus infection and acquired immunodeficiency syndrome. The material shall include information on known modes of transmission and methods of controlling and preventing these diseases with an emphasis on appropriate behavior and attitude change.

Section 154. KRS 72.460 is amended to read as follows:

The cost of autopsies shall be paid for by the fiscal court; provided, however, that the Justice *and Public Safety* Cabinet, ~~Office~~~~Division~~ of the Kentucky State Medical ~~Examiner~~~~Examiners Office~~, may contract with pathologists and toxicologists and chemists and pay for such autopsies within the budgetary limitations of funds appropriated by the General Assembly for this purpose.

Section 155. KRS 95.435 is amended to read as follows:

- (1) The police department in cities of the second class, and urban-county government shall take charge of property, within their jurisdiction, alleged to be or suspected of being the proceeds of crime, property taken from the person of a prisoner, lost or abandoned property taken into the custody of any member of the police force or criminal court, and property taken from persons supposed to be insane, intoxicated or otherwise incapable of taking care of themselves. The officer or court having custody of such property shall as soon as practicable deliver it into the custody of the police department.
- (2) All such property shall be particularly described and registered by the police department in a book kept for that purpose, containing the name of the owner, if ascertained, the place where found, the name of the person from whom taken, with the general circumstances, the date of its receipt, the name of the officer recovering the property, the names of all claimants thereto, and any final disposition of the property. The police department shall advertise the property pursuant to KRS Chapter 424 for the information of the public as to the amount and disposition of the property.
- (3) If any property in the custody of the police department is desired as evidence in any criminal court, such property shall be delivered to any officer who presents an order to that effect from the court. Such property shall not be retained in the court but shall be returned to the police department.
- (4) All property except firearms that remains in the custody of the police department for three (3) months, without any lawful claimant thereto, may be sold at public auction in a suitable room designated for that purpose after having been advertised pursuant to KRS Chapter 424. The proceeds of such sales shall be paid into the police and firefighters' pension fund of said city or urban-county government. Firearms shall be transferred to the *Department of* Kentucky State Police within ninety (90) days of abandonment, confiscation, release of the weapon as evidence, or forfeiture by a court, whichever occurs later.

Section 156. KRS 95.960 is amended to read as follows:

Funds in the Kentucky Law Enforcement Foundation Program Fund may be utilized by the Department of Criminal Justice Training to reimburse cities, urban-counties, or charter counties with regular police departments of ten (10) or fewer officers for the cost of the base salary for each regular, full-time police officer while the officer is obtaining the training required in KRS 95.955. The city, urban-county, or charter county shall show to the satisfaction of the Department of Criminal Justice Training that it will be placed in a situation of undue hardship if the funding is not provided. The secretary of the Justice *and Public Safety* Cabinet shall promulgate administrative regulations upon the recommendation of the Kentucky Law Enforcement Council to define what constitutes "undue financial hardship" and to otherwise implement this section.

Section 157. KRS 100.361 is amended to read as follows:

- (1) Nothing in this chapter shall apply or affect zoning regulations adopted pursuant to KRS Chapter 183.

- (2) Nothing in this chapter shall impair the sovereignty of the Commonwealth of Kentucky over its political subdivisions. Any proposal affecting land use by any department, commission, board, authority, agency, or instrumentality of state government shall not require approval of the local planning unit. However, adequate information concerning the proposals shall be furnished to the planning commission by the department, commission, board, authority, agency, or instrumentality of state government. If the state proposes to acquire, construct, alter, or lease any land or structure to be used as a penal institution or correctional facility, and the proposed use is inconsistent with or contrary to local planning regulations or the comprehensive plan for the area, the secretary of the Justice *and Public Safety* Cabinet, or his *or her* designee, shall notify, in accordance with KRS 424.180, the planning commission, the local governing body, who has jurisdiction over the area involved, and the general public of the state's proposals for the area, and he *or she* shall hold a public hearing on the proposals within the area at least ninety (90) days prior to commencing the acquisition, construction, alteration, or leasing. A final report on the public hearing shall be submitted to the Governor and members of the General Assembly within twenty-five (25) days of the public hearing, and prior to commencing any construction, alteration, acquisition, or leasing of such property or facilities.

Section 158. KRS 117.187 is amended to read as follows:

- (1) The State Board of Elections shall regularly provide special training regarding the election laws and methods of enforcement to all members of county boards of elections, county attorneys, Commonwealth's attorneys, and certain members of the *Department of* Kentucky State Police.
- (2) The county board of elections shall provide special training before each primary and regular election to all election officers, alternates, and certified challengers regarding their duties and the penalties for failure to perform. Election officers, including alternates, and certified challengers shall attend the training session, unless excused by the county board of elections for reason of illness or other emergency. Any person who fails to attend a training session without being excused shall be prohibited from serving as an election officer or challenger for a period of five (5) years. The training provided by the county board of elections shall include, but not be limited to, the following:
 - (a) Operation of the voting machine or ballot cards;
 - (b) Posting of necessary signs and notices at the polling place;
 - (c) Voter assistance;
 - (d) Maintaining precinct rosters;
 - (e) Confirmation of a voter's identity;
 - (f) Challenge of a voter;
 - (g) Completing changes of address or name at the polling place;
 - (h) Qualifications for voting in a primary election;
 - (i) Electioneering and exit polling;
 - (j) Write-in voting procedures;
 - (k) Persons who may be in the voting room;
 - (l) Election violations and penalties;
 - (m) Assistance which may be provided by law enforcement officers;
 - (n) Election reports;
 - (o) Disability awareness;
 - (p) Provisional voting process; and
 - (q) Election emergency contingency plan.
- (3) The county attorney shall attend the training session for election officers to assist in explaining the duties and penalties for failure to perform.
- (4) Compensation in the minimum amount of ten dollars (\$10) for reimbursement of actual expenses shall be paid by the county to the election officers for attending the training session.

Section 159. KRS 117.237 is amended to read as follows:

- (1) A county board of elections, a clerk, judge/executive, sheriff, fiscal court, the Attorney General, grand jury or the county chairman of either of the two (2) political parties which polled the largest vote in the preceding general election may request that the **Department of Kentucky** State Police patrol voting precincts in the county during the hours the polls are open on the day of any primary or regular or special election for the purpose of maintaining order and enforcing the election laws of the state. The **Department of Kentucky** State Police shall investigate any reported violations of the election laws. Candidates may petition any of the aforementioned officers or bodies to request State Police patrols of county voting precincts.
- (2) The **Department of Kentucky** State Police shall report the results of their investigation to the appropriate Commonwealth's and county attorneys.

Section 160. KRS 136.392 is amended to read as follows:

- (1) (a) Every domestic, foreign, or alien insurer, other than life and health insurers, which is either subject to or exempted from Kentucky premium taxes as levied pursuant to the provisions of either KRS 136.340, 136.350, 136.370, or 136.390, shall charge and collect a surcharge of one dollar and fifty cents (\$1.50) upon each one hundred dollars (\$100) of premium, assessments, or other charges, except for those municipal premium taxes, made by it for insurance coverage provided to its policyholders, on risk located in this state, whether the charges are designated as premiums, assessments, or otherwise. The premium surcharge shall be collected by the insurer from its policyholders at the same time and in the same manner that its premium or other charge for the insurance coverage is collected. The premium surcharge shall be disclosed to policyholders pursuant to administrative regulations promulgated by the executive director of insurance. However, no insurer or its agent shall be entitled to any portion of any premium surcharge as a fee or commission for its collection. On or before the twentieth day of each month, each insurer shall report and remit to the Department of Revenue, on forms as it may require, all premium surcharge moneys collected by it during its preceding monthly accounting period less any moneys returned to policyholders as applicable to the unearned portion of the premium on policies terminated by either the insured or the insurer. Insurers with an annual liability of less than one thousand dollars (\$1,000) for each of the previous two (2) calendar years may report and remit to the Department of Revenue all premium surcharge moneys collected on a calendar year basis on or before the twentieth (20th) day of January of the following calendar year. The funds derived from the premium surcharge shall be deposited in the State Treasury, and shall constitute a fund allocated for the uses and purposes of the Firefighters Foundation Program fund (KRS 95A.220 and 95A.262) and the Law Enforcement Foundation Program fund (KRS 15.430).
 - (b) Effective July 1, 1992, the surcharge rate in paragraph (a) of this subsection shall be adjusted by the commissioner of revenue to a rate calculated to provide sufficient funds for the uses and purposes of the Firefighters Foundation Program fund as prescribed by KRS 95A.220 and 95A.262 and the Law Enforcement Foundation Program fund as prescribed by KRS 15.430 for each fiscal year. The rate shall be calculated using as its base the number of local government units eligible for participation in the funds under applicable statutes as of January 1, 1994. To allow the commissioner of revenue to calculate an appropriate rate, the secretary of the Environmental and Public Protection Cabinet and the secretary for the Justice **and Public Safety** Cabinet shall certify to the commissioner of revenue, no later than January 1 of each year, the estimated budgets for the respective funds specified above, including any surplus moneys in the funds, which shall be incorporated into the consideration of the adjusted rate for the next biennium. As soon as practical, the commissioner of revenue shall advise the executive director of insurance of the new rate and the executive director shall inform the affected insurers. The rate adjustment process shall continue on a biennial basis.
- (2) Within five (5) days after the end of each month, all insurance premium surcharge proceeds deposited in the State Treasury as set forth in this section shall be paid by the State Treasurer into the Firefighters Foundation Program fund trust and agency account and the Law Enforcement Foundation Program fund trust and agency account. The amount paid into each account shall be proportionate to each fund's respective share of the total deposits, pursuant to KRS 42.190. Moneys deposited to the Law Enforcement Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 15.410 to 15.500, except that beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse. On and after July 1, 1999, moneys in this account shall not lapse.

Money deposited to the Firefighters Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 95A.200 to 95A.300, except that beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse, but moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. On and after July 1, 1999, moneys in this account shall not lapse.

- (3) Insurance premium surcharge funds collected from the policyholders of any domestic mutual company, cooperative, or assessment fire insurance company shall be deposited in the State Treasury, and shall be paid monthly by the State Treasurer into the Firefighters Foundation Program fund trust and agency account as provided in KRS 95A.220 to 95A.262. However, insurance premium surcharge funds collected from policyholders of any mutual company, cooperative, or assessment fire insurance company which transfers its corporate domicile to this state from another state after July 15, 1994, shall continue to be paid into the Firefighters Foundation Program fund and the Law Enforcement Foundation Program fund as prescribed.
- (4) No later than July 1 of each year, the Office of Insurance shall provide the Department of Revenue with a list of all Kentucky-licensed property and casualty insurers and the amount of premium volume collected by the insurer for the preceding calendar year as set forth on the annual statement of the insurer. No later than September 1 of each year, the Department of Revenue shall calculate an estimate of the premium surcharge due from each insurer subject to the insurance premium surcharge imposed pursuant to this section, based upon the surcharge rate imposed pursuant to this section and the amount of the premium volume for each insurer as reported by the Office of Insurance. The Department of Revenue shall compare the results of this estimate with the premium surcharge paid by each insurer during the preceding year, and shall provide the Legislative Research Commission, the Commission on Fire Protection Personnel Standards and Education, the Kentucky Law Enforcement Council, and the Office of Insurance with a report detailing its findings on a cumulative basis. In accordance with KRS 131.190, the Department of Revenue shall not identify or divulge the confidential tax information of any individual insurer in this report.

Section 161. KRS 148.290 is amended to read as follows:

- (1) The commission may enter into agreements with the law enforcement agency of any urban-county or counties in which the State Horse Park is located or in any adjacent county or with the *Department of Kentucky* State Police for proper policing of the State Horse Park. If authorized to do so by the commission and subject to KRS 61.300, the executive director may commission employees of the park as patrol officers. These patrol officers shall have all the powers of peace officers upon the property of the State Horse Park and the public property and roads traversing or immediately adjacent thereto.
- (2) The commission is authorized to establish by resolution speed limits governing the operation of motor vehicles on horse park property. Notice to the public of such speed limits shall be posted by signs or markings.

Section 162. KRS 154A.080 is amended to read as follows:

- (1) The corporation shall establish and maintain a personnel program for its employees. The corporation may procure benefit programs or group insurance plans and shall provide a retirement plan. Employees of the corporation shall serve at the pleasure of the president who shall determine their compensation and benefits. The employees shall be subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the president. Such personnel actions shall be exempt from the provisions of KRS Chapter 18A. The compensation of officers at the division head level and above shall be exempt from the provisions of KRS 64.640.
- (2) No officer or employee of the corporation shall have a financial interest in any vendor doing business or proposing to do business with the corporation.
- (3) No officer or employee of the corporation with decision-making authority shall participate in any decision involving a retailer with whom the officer or employee has a financial interest of five percent (5%) or more of the total value thereof.
- (4) No officer or employee of the corporation who leaves the employ of the corporation may represent any vendor, lottery retailer, or related entity before the corporation for a period of two (2) years following termination of employment with the corporation.
- (5) A background investigation shall be conducted by the chief security officer of the corporation on every applicant who has reached the final selection process prior to employment by the corporation. Applicants may

be fingerprinted as a condition of employment. In addition, all division directors of the corporation and employees of the corporation performing duties primarily related to security matters, prior to employment, shall be subject to a background investigation report conducted by the *Department of* Kentucky State Police. The *Department of* Kentucky State Police shall be reimbursed by the corporation for the cost of investigations conducted pursuant to this section. No person who has been convicted of a felony, bookmaking or other forms of illegal gambling, or of a crime involving moral turpitude shall be employed by the corporation. Any employee of the corporation who is or has been convicted of a felony, bookmaking, or any other form of illegal gambling or of a crime involving moral turpitude shall be terminated from employment by the corporation, except that this requirement shall not be interpreted to limit the right of the corporation to terminate the employment of any employee, at will, prior to any conviction.

Section 163. KRS 154A.650 is amended to read as follows:

- (1) The *Department of* Kentucky State Police shall, at the request of the division of security, perform full criminal background investigations on all potential vendors and potential employees of the corporation at the level of division director and above and at any level within the division of security. The corporation shall reimburse the *Department of* Kentucky State Police for the actual costs of such investigations.
- (2) The corporation or its division of security shall:
 - (a) Conduct criminal background investigations and credit investigations on all potential retailers and investigate all potential employees of the corporation not referred to in subsection (1) of this section;
 - (b) Supervise ticket validation and lottery drawings;
 - (c) Inspect at times determined solely by the division, the facilities of any vendor in order to determine the integrity of the vendor's product and in order to determine whether the vendor is in compliance with its contract;
 - (d) Report any suspected violations of this chapter to the appropriate Commonwealth's attorney, or the Attorney General and law enforcement agencies; and
 - (e) Upon request, provide assistance to any Commonwealth's attorney, the Attorney General or law enforcement agency investigating a violation of this chapter.

Section 164. KRS 156.483 is amended to read as follows:

- (1) The State Department of Education shall not employ, in a position which involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime defined in KRS 17.165 as a felony. The Department of Education may employ, at its discretion, persons convicted of sex crimes classified as a misdemeanor. The Department of Education shall request all conviction information for any applicant for employment from the Justice *and Public Safety* Cabinet prior to employing the applicant.
- (2) Each application form, provided by the Department of Education to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (3) Any request for records under subsection (1) of this section shall be on a form approved by the Justice *and Public Safety* Cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.
- (4) The provisions of this section shall apply after July 15, 1988, to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor.

Section 165. KRS 156.495 is amended to read as follows:

- (1) The Department of Education shall weekly distribute the names, provided by the *Department of* Kentucky State Police, of all missing children and children who have been recovered to all public and private schools admitting children in preschool through grade twelve (12).
- (2) Every public and private school in this state shall notify local law enforcement or the *Department of* Kentucky State Police at its earliest known contact with any child whose name appears on the list of missing Kentucky children.

- (3) The department shall encourage each public and private school to engage in a program whereby the parents of children who are absent from school are notified in person or by telephone to verify if they know that the child is not attending school.

Section 166. KRS 158.032 is amended to read as follows:

- (1) Upon notification by the commissioner of education of a child's disappearance, any school in which the child is currently or was previously enrolled shall flag the record of the child so that when a copy of or information regarding the child's record is requested, the school shall be alerted that the record is that of a missing child. The school shall immediately report to local law enforcement or the *Department of* Kentucky State Police any request concerning flagged records or any knowledge as to the whereabouts of any missing child.
- (2) Upon notification by the commissioner of education of any missing child who has been recovered, the school shall remove the flag from the child's record.
- (3) Upon enrollment of a student for the first time in any elementary or secondary school, the school shall notify in writing the person enrolling the student that within thirty (30) days the person shall provide either:
 - (a) A certified copy of the student's birth certificate; or
 - (b) Other reliable proof of the student's identity and age, and an affidavit of the inability to produce a copy of the birth certificate.
- (4) Upon the failure of a person enrolling the student to comply with this section, the school shall notify the person in writing that unless he complies within ten (10) days the case shall be referred to the *Department of* Kentucky State Police or local law enforcement officials for investigation. If compliance is not obtained within the ten (10) day period, the school shall so refer the case.
- (5) Within fourteen (14) days after enrolling a transfer student, each elementary or secondary school shall request directly from the student's previous school a certified copy of the student's record. Any school receiving a request of a student's record which has been flagged as the record of a missing child shall not forward the student's record but shall instead notify local law enforcement or the *Department of* Kentucky State Police.

Section 167. KRS 158.155 is amended to read as follows:

- (1) If a student has been adjudicated guilty of an offense specified in this subsection or has been expelled from school for an offense specified in this subsection, prior to a student's admission to any school, the parent, guardian, principal, or other person or agency responsible for a student shall provide to the school a sworn statement or affirmation indicating on a form provided by the Kentucky Board of Education that the student has been adjudicated guilty or expelled from school attendance at a public or private school in this state or another state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs. The sworn statement or affirmation shall be sent to the receiving school within five (5) working days of the time when the student requests enrollment in the new school.
- (2) If any student who has been expelled from attendance at a public or private school in this state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his records, those records shall reflect the charges and final disposition of the expulsion proceedings.
- (3) If any student who is subject to an expulsion proceeding at a public or private school in this state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his records to a new school, the records shall not be transferred until that proceeding has been terminated and shall reflect the charges and any final disposition of the expulsion proceedings.
- (4) A person who is an administrator, teacher, or other employee of a public or private school shall promptly make a report to the local police department, sheriff, or *the Department of* Kentucky State Police, by telephone or otherwise, if:
 - (a) The person knows or has reasonable cause to believe that conduct has occurred which constitutes:
 1. A misdemeanor or violation offense under the laws of this Commonwealth and relates to:
 - a. Carrying, possession, or use of a deadly weapon; or
 - b. Use, possession, or sale of controlled substances; or
 2. Any felony offense under the laws of this Commonwealth; and

- (b) The conduct occurred on the school premises or within one thousand (1,000) feet of school premises, on a school bus, or at a school-sponsored or sanctioned event.
- (5) A person who is an administrator, teacher, supervisor, or other employee of a public or private school who receives information from a student or other person of conduct which is required to be reported under subsection (1) of this section shall report the conduct in the same manner as required by that subsection.
- (6) Neither the husband-wife privilege of KRE 504 nor any professional-client privilege, including those set forth in KRE 506 and 507, shall be a ground for refusing to make a report required under this section or for excluding evidence in a judicial proceeding of the making of a report and of the conduct giving rise to the making of a report. However, the attorney-client privilege of KRE 503 and the religious privilege of KRE 505 are grounds for refusing to make a report or for excluding evidence as to the report and the underlying conduct.
- (7) Nothing in this section shall be construed as to require self-incrimination.
- (8) A person acting upon reasonable cause in the making of a report under this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred or imposed from:
 - (a) Making the report; and
 - (b) Participating in any judicial proceeding that resulted from the report.

Section 168. KRS 160.151 is amended to read as follows:

- (1) (a) Beginning with the 2002-2003 school year, a private, parochial, or church school that has voluntarily been certified by the Kentucky Board of Education in accordance with the provisions of KRS 156.160(3) may require a national and state criminal background check on all new certified hires in the school and student teachers assigned to the school. Certified individuals who were employed in another certified position in a Kentucky school within six (6) months of the date of the hire and who had previously submitted to a national and state criminal background check for previous employment may be excluded from further national or state criminal background checks.
- (b) The national criminal history background check shall be conducted by the Federal Bureau of Investigation. The state criminal history background check shall be conducted by the **Department of** Kentucky State Police or the Administrative Office of the Courts.
- (c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the **Department of** Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation by the **Department of** Kentucky State Police after a state criminal background check has been conducted. Any fee charged by the **Department of** Kentucky State Police, the Administrative Office of the Courts, or the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (2) If a school requires a criminal background check for a new hire, the school shall conspicuously include the following disclosure statement on each application or renewal form provided by the employer to an applicant for a certified position: "STATE LAW AUTHORIZES THIS SCHOOL TO REQUIRE A CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT FOR THIS TYPE OF POSITION."
- (a) For purposes of this subsection, "contractor" means an adult who is permitted access to school grounds pursuant to a current or prospective contractual agreement with the school, school board, school district, or school-affiliated entity, at times when students are present. The term "contractor" includes an employee of a contractor.
- (b) The school or school board may require a contractor, volunteer, or visitor to submit to a national criminal history check by the Federal Bureau of Investigation and state criminal history background check by the **Department of** Kentucky State Police or Administrative Office of the Courts. Any request for records under this section shall be on an applicant fingerprint card provided by the **Department of** Kentucky State Police. The results of the state criminal background check and the results of the national criminal history background check, if requested, shall be sent to the hiring superintendent. Any fee charged by the **Department of** Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.

- (3) (a) A nonpublic school voluntarily implementing the provisions of this chapter may choose not to employ any person who is a violent offender as defined by KRS 17.165(2), has been convicted of a sex crime which is classified as a felony as defined by KRS 17.165(1), or has committed a violent crime as defined in KRS 17.165(3). A nonpublic school may employ, at its discretion, persons convicted of sex crimes classified as a misdemeanor.
- (b) If a school term has begun and a certified position remains unfilled or if a vacancy occurs during a school term, a nonpublic school implementing the provisions of this chapter may employ an individual who will have supervisory or disciplinary authority over minors on probationary status pending receipt of a criminal history background check.
- (c) Employment at a nonpublic school implementing the provisions of this chapter may be contingent on the receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165.
- (d) Nonpublic schools implementing the provisions of this chapter may terminate probationary employment under this section upon receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165.

Section 169. KRS 160.380 is amended to read as follows:

- (1) As used in this section:
 - (a) "Contractor" means an adult who is permitted access to school grounds pursuant to a current or prospective contractual agreement with the school, school board, school district, or school-affiliated entity, at times when students are present. The term "contractor" includes an employee of a contractor.
 - (b) "Relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.
 - (c) "Vacancy" means any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.
- (2) (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. No superintendent of schools shall appoint or transfer himself *or herself* to another position within the school district.
- (b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.
- (c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.
- (d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position. The superintendent shall, pursuant to administrative regulations of the Kentucky Board of Education, report annually the district's recruitment process and the activities used to increase the percentage of minority teachers in the district.

- (e) No relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is a classified or certified employee of the school district for at least thirty-six (36) months prior to the superintendent assuming office, or prior to marrying a relative of the superintendent, and who is qualified for the position the employee holds. A superintendent's spouse who has at least twenty (20) years of service in school systems may be an employee of the school district. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote a relative who continues employment under an exception of this subsection.
- (f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection.
- (g)
 - 1. No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year.
 - 2. No spouse of a principal shall be employed in the principal's school, except:
 - a. A principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district; or
 - b. A principal's spouse who was employed in the 1989-90 school year and is in a school district containing no more than one (1) elementary school, one (1) middle school, and one (1) high school.
 - 3. A principal's spouse who is employed in the principal's school shall be evaluated by a school administrator other than the principal.
 - 4. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.
- (3) No superintendent shall employ in any position in the district any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor.
- (4)
 - (a) A superintendent shall require a national and state criminal background check on all new certified hires in the school district and student teachers assigned within the district. Excluded are certified individuals who were employed in another certified position in a Kentucky school district within six (6) months of the date of hire and who had previously submitted to a national and state criminal background check for the previous employment.
 - (b) The superintendent shall require that each new certified hire and student teacher, as set forth in paragraph (a) of this subsection, submit to a national and state criminal history background check by the **Department of** Kentucky State Police and the Federal Bureau of Investigation.
 - (c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by **the Department of** Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation from the **Department of** Kentucky State Police after a state criminal background check is conducted. The results of the state and federal criminal background check shall be sent to the hiring superintendent. Any fee charged by the **Department of** Kentucky State Police and the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.
 - (d) The Education Professional Standards Board may promulgate administrative regulations to impose additional qualifications to meet the requirements of Public Law 92-544.

- (5) A superintendent shall require a state criminal background check on all classified initial hires.
- (a) The superintendent shall require that each classified initial hire submit to a state criminal history background check by the **Department of** Kentucky State Police. If an applicant has been a resident of Kentucky twelve (12) months or less, the superintendent may require a national criminal history background check as a condition of employment.
 - (b) Any request for records under this section shall be on an applicant fingerprint card provided by **the Department of** Kentucky State Police. The results of the state criminal background check and the results of the national criminal history background check, if requested under the provisions of paragraph (a) of this subsection, shall be sent to the hiring superintendent. Any fee charged by the **Department of** Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (6) The superintendent may require a contractor, volunteer, or visitor to submit to a national and state criminal history background check by the **Department of** Kentucky State Police and the Federal Bureau of Investigation. Any request for records under this section shall be on an applicant fingerprint card provided by the **Department of** Kentucky State Police. The results of the state criminal background check and the results of the national criminal history background check, if requested, shall be sent to the hiring superintendent. Any fee charged by the **Department of** Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (7)
 - (a) If a school term has begun and a certified or classified position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the criminal history background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.
 - (b) Employment shall be contingent on the receipt of the criminal history background check documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.
 - (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the school district of a criminal history background check documenting a record of a sex crime or as a violent offender as defined in KRS 17.165 and no further procedures shall be required.
 - (d) The provisions of KRS 161.790 shall apply to terminate employment of a certified employee on the basis of a criminal record other than a record of a sex crime or as a violent offender as defined in KRS 17.165.
- (8)
 - (a) Each application or renewal form, provided by the employer to an applicant for a classified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT. UNDER CERTAIN CIRCUMSTANCES, A NATIONAL CRIMINAL HISTORY BACKGROUND CHECK MAY BE REQUIRED AS A CONDITION OF EMPLOYMENT."
 - (b) Each application or renewal form, provided by the employer to an applicant for a certified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT."
 - (c) Each application form for a district position shall require the applicant to:
 - 1. Identify the states in which he or she has maintained residency, including the dates of residency; and
 - 2. Provide picture identification.
- (9) The provisions of subsections (4), (5), (6), (7), and (8) of this section shall apply to a nonfaculty coach or nonfaculty assistant as defined under KRS 161.185.
- (10) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, when an employee of the school district is charged with any offense which is classified as a felony, the superintendent may transfer the employee to a second position until such time as the employee is found not guilty, the charges are dismissed,

the employee is terminated, or the superintendent determines that further personnel action is not required. The employee shall continue to be paid at the same rate of pay he or she received prior to the transfer. If an employee is charged with an offense outside of the Commonwealth, this provision may also be applied if the charge would have been treated as a felony if committed within the Commonwealth. Transfers shall be made to prevent disruption of the educational process and district operations and in the interest of students and staff and shall not be construed as evidence of misconduct.

Section 170. KRS 161.148 is amended to read as follows:

- (1) As used in this section, "volunteers" means adults who assist teachers, administrators, or other staff in public school classrooms, schools, or school district programs, and who do not receive compensation for their work.
- (2) Local school districts may utilize adult volunteers in supplementary instructional and noninstructional activities with pupils under the direction and supervision of the professional administrative and teaching staff.
- (3) Each board of education shall develop policies and procedures that encourage volunteers to assist in school or district programs.
- (4) Each local board of education shall develop and adopt a policy requiring a state criminal records check on all volunteers who have contact with students on a regularly scheduled or continuing basis, or who have supervisory responsibility for children at a school site or on school-sponsored trips. The request for records may be from the Justice *and Public Safety* Cabinet or the Administrative Office of the Courts, or both, and shall include records of all available convictions as described in KRS 17.160(1). Any request for a criminal records check of a volunteer under this subsection shall be on a form or through a process approved by the Justice *and Public Safety* Cabinet or the Administrative Office of the Courts. If the cabinet or the Administrative Office of the Courts charges fees, the local board of education shall arrange to pay the cost which may be from local funds or donations from any source including volunteers.
- (5) The local board of education shall provide orientation material to all volunteers who have contact with students on a regularly scheduled or continuing basis, including school policies, safety and emergency procedures, and other information deemed appropriate by the local board of education.
- (6) The provisions of this section shall not apply to students enrolled in an educational institution and who participate in observations and educational activities under direct supervision of a local school teacher or administrator in a public school.

Section 171. KRS 164.2841 is amended to read as follows:

- (1)
 - (a) Any person whose parent or any nonmarried widow or widower whose spouse was a resident of the Commonwealth of Kentucky upon becoming a law enforcement officer, firefighter, or volunteer firefighter and who was killed while in active service or training for active service or who died as a result of a service-connected disability shall not be required to pay any matriculation or tuition fee upon admission to any state-supported university, community college, or vocational training institution. The provisions of this subsection shall apply to any firefighter or volunteer firefighter who is killed or dies under the conditions covered in this subsection on July 1, 1989, or thereafter.
 - (b) In order to obtain the benefits conferred by paragraph (a) of this subsection, the parent-child relationship shall be shown by birth certificate, adoption papers, or other documentary evidence. The spousal relationship shall be shown by a marriage certificate or other documentary evidence. The parent's or spouse's service and the cause of death shall be evidenced by certification from the records of the Kentucky Justice *and Public Safety* Cabinet, the appropriate city or county law enforcement agency which employed the deceased, the administrative agency for the fire department or fire protection district recognized for funding under KRS 95A.262, or the administrative agency having jurisdiction over any paid firefighters of all counties and cities of all classes.
- (2)
 - (a) Any person whose parent or any nonmarried widow or widower whose spouse was an employee participating in a state-administered retirement system, and not otherwise covered by subsection (1) of this section, and who died as a result of a duty-related injury as described in KRS 61.621 shall not be required to pay any matriculation or tuition fee upon admission to any state-supported university, community college, or vocational training institution.
 - (b) In order to obtain the benefits conferred by paragraph (a) of this subsection, the parent-child relationship shall be shown by birth certificate, adoption papers, or other documentary evidence. The spousal

relationship shall be shown by a marriage certificate or other documentary evidence. The parent's or spouse's service and the cause of death shall be evidenced by certification from the records of the employing agency or the appropriate retirement system.

- (3) If one so admitted to a state-supported university, community college, or vocational training institution under the provisions of this section shall have obtained a cash scholarship paid or payable to the institution, from whatever source, the amount of the scholarship shall be applied to the credit of the applicant in the payment of incidental expenses of his attendance at the institution, and any balance, if the terms of the scholarship permit, shall be returned to the applicant.

Section 172. KRS 164.2842 is amended to read as follows:

- (1)
 - (a) The spouse, regardless of age, and any child of a permanently and totally disabled law enforcement officer, firefighter, or volunteer firefighter injured while in active service or in training for active service, who is over the age of seventeen (17) and under the age of twenty-three (23) shall not be required to pay any matriculation or tuition fee upon his admission to any state-supported university, community college, or vocational training institution for a period not in excess of thirty-six (36) months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion.
 - (b) For the spouse or child to be entitled to benefits under this section, the disabled law enforcement officer, firefighter, or volunteer firefighter shall be rated permanently and totally disabled for pension purposes or one hundred percent (100%) disabled for compensation purposes by the Kentucky Justice *and Public Safety* Cabinet, the appropriate city or county law enforcement agency which employed the disabled, the administrative agency for the fire department or fire protection district recognized for funding under KRS 95A.262, or the administrative agency having jurisdiction over any paid firefighters of all counties and cities of all classes, or if deceased, the claim to benefits is to be based on the rating held by the law enforcement officer, firefighter, or volunteer firefighter at the time of death. The parent's or spouse's service and rating shall be evidenced by certification from the records of the Kentucky Justice *and Public Safety* Cabinet, the appropriate local law enforcement agency, the administrative agency for the fire department or fire protection district recognized for funding under KRS 95A.262, or the administrative agency having jurisdiction over any paid firefighters of all counties and cities of all classes.
 - (c) In the absence of certification of permanent and total disability by the Kentucky Office of Workers' Claims, the Kentucky Justice *and Public Safety* Cabinet, the appropriate local law enforcement agency, the administrative agency for the fire department or fire protection district recognized for funding under KRS 95A.262, or the administrative agency having jurisdiction over any paid firefighters of all counties and cities of all classes, medical evidence showing permanent and total disability or the existence of permanent and total disability for a period of at least thirty (30) days immediately prior to death may be accepted, if this evidence is signed by a physician licensed to practice or an official of an accredited medical hospital.
 - (d) The parent-child relationship shall be shown by birth certificate, legal adoption papers, or other documentary evidence. The spousal relationship shall be shown by a marriage certificate or other documentary evidence.
 - (e) To entitle a spouse or child to benefits under this section the disabled law enforcement officer, firefighter, or volunteer firefighter shall have been a resident of the Commonwealth of Kentucky upon becoming a law enforcement officer, firefighter, or volunteer firefighter.
- (2)
 - (a) The spouse, regardless of age, and any child of a person who was an employee participating in a state-administered retirement system and not otherwise covered by subsection (1) of this section and who was disabled as a result of a duty-related injury as described in KRS 61.621, who is over the age of seventeen (17) and under the age of twenty-three (23) shall not be required to pay any matriculation or tuition fee upon his admission to any state-supported university, community college, or vocational training institution for a period not in excess of thirty-six (36) months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion.
 - (b) The parent-child relationship shall be shown by birth certificate, legal adoption papers, or other documentary evidence. The spousal relationship shall be shown by a marriage certificate or other documentary evidence.

- (3) The marriage of an eligible child shall not serve to deny full entitlement to the benefits provided in this section.

Section 173. KRS 164.970 is amended to read as follows:

- (1) Vehicles used for emergency purposes by the safety and security department of a public institution of higher education shall be considered as emergency vehicles and shall be equipped with blue lights and sirens and shall be operated in conformance with the requirements of KRS Chapter 189.
- (2) Safety and security officers directly employed by the governing board of public institutions of higher education pursuant to KRS 164.950 to 164.980 shall have the rights accorded to peace officers in cities of the first four (4) classes provided under KRS 527.020, provided the governing board of the public institution of higher education so authorized in writing.
- (3) Safety and security departments of public institutions of higher education may install, maintain, and operate radio systems on police or other radio frequencies under licenses issued by the Federal Communications Commission, or its successor; KRS 432.570 to the contrary notwithstanding.
- (4) Safety and security departments of public institutions of higher education shall comply with the requirements of the Kentucky Revised Statutes and the Justice *and Public Safety* Cabinet with regard to reporting of criminal and other statistics.

Section 174. KRS 164.955 is amended to read as follows:

- (1) Safety and security officers so appointed shall be peace officers and conservators of the peace. They shall have general police powers including the power to arrest, without process, all persons who within their view commit any crime or misdemeanor. They shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, except that they shall be empowered to serve civil process to the extent authorized by the employing governing board of the respective institution employing them. Without limiting the generality of the foregoing, such safety and security officers are hereby specifically authorized and empowered, and it shall be their duty:
 - (a) To preserve the peace, maintain order and prevent unlawful use of force or violence or other unlawful conduct on the campuses of their respective institutions, and to protect all persons and property located thereon from injury, harm and damage;
 - (b) To enforce, and to assist the officials of their respective institutions in the enforcement of, the lawful rules and regulations of said institution, and to assist and cooperate with other law enforcement agencies and officers. Provided, however, that such safety and security officers shall exercise the powers herein granted upon any real property owned or occupied by their respective institutions, including the streets passing through and adjacent thereto. Said powers may be exercised in any county of the Commonwealth where the institution owns, uses, or occupies property. Additional jurisdiction may be established by agreement with the chief of police of the municipality or sheriff of the county or the appropriate law enforcement agency in which such property is located, dependent upon the jurisdiction involved.
- (2) Safety and security officers may exercise their powers away from the locations described in subsection (1) of this section only upon the following conditions:
 - (a) When in hot pursuit of an actual or suspected violator of the law; or
 - (b) When authorized to do so pursuant to the agreement authorized by subsection (1) of this section; or
 - (c) When requested to act by the chief of police of the city or county in which the institution's property is located; or
 - (d) When requested to act by the sheriff of the county in which the institution's property is located; or
 - (e) When requested to act by the ~~commissioner~~*director* of the *Department of Kentucky* State Police; or
 - (f) When requested to act by the authorized delegates of those persons or agencies listed in (c), (d) or (e) above; or
 - (g) When requested to assist a state, county or municipal police officer, sheriff, or other peace officer in the performance of his lawful duties; or

- (h) When operating under an interlocal cooperation agreement pursuant to KRS Chapter 65.
- (3) Safety and security officers appointed pursuant to KRS 164.950 to 164.980 shall have, in addition to the other powers enumerated herein, the power to conduct investigations anywhere in this Commonwealth, provided such investigation relates to criminal offenses which occurred on property owned, leased, or controlled by the university. Where desirable and at the discretion of the institution of higher education's police officials, the university safety and security department may coordinate said investigations with any law enforcement agency of this Commonwealth or with agencies of the federal government.
- (4) Safety and security departments created and operated by the governing boards of public institutions of higher education shall, for all purposes, be deemed public police departments and the sworn safety and security officers thereof are, for all purposes, deemed public police officers.
- (5) Nothing in KRS 164.950 to 164.980 shall be construed as a diminution or modification of the authority or responsibility of any city or county police department, the *Department of* Kentucky State Police, sheriff, constable, or other peace officer either on the property of an institution of higher education or otherwise.

Section 175. KRS 165A.460 is amended to read as follows:

All proprietary schools located or doing business in this state that offer CDL driver training shall be governed by the provisions of this chapter, except for matters governing:

- (1) The curriculum which shall be established by the board in consultation with the *Department of* Kentucky State Police and the Kentucky Community and Technical College System; and
- (2) The inspection of CDL driver training school facilities which shall be under the authority of the *Department of* Kentucky State Police pursuant to KRS 165A.475 and 332.095.

Section 176. KRS 165A.465 is amended to read as follows:

- (1) All persons initially applying for a license to operate a CDL driver training school or a license as a CDL driver training instructor, shall be required to undergo a state and national criminal history background check conducted by the *Department of* Kentucky State Police. Application forms for a license to operate a CDL driver training school or a license as a CDL driver training instructor shall conspicuously state the following: "STATE LAW REQUIRES A STATE AND NATIONAL CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF APPLYING FOR THIS LICENSE. ANY PERSON WHO REFUSES TO SUBMIT TO A CRIMINAL HISTORY BACKGROUND CHECK SHALL NOT BE ELIGIBLE TO APPLY FOR, OR BE ISSUED, A LICENSE TO OPERATE A CDL DRIVER TRAINING SCHOOL OR A LICENSE FOR A CDL DRIVER TRAINING INSTRUCTOR."
- (2) All applicants shall be required to submit to being fingerprinted in accordance with administrative regulations promulgated by the *Department of* Kentucky State Police under KRS Chapter 13A. If the applicant is a corporation, the fingerprints of all officers shall be required.
- (3) The results of the state and national criminal history background checks shall be sent to the board for review within seventy-two (72) hours. If circumstances prohibit the results from being sent to the board within seventy-two (72) hours, the application shall not be processed further until the results are made available to the board. The board shall inform the applicant if, based upon the criminal history background check, the applicant is either eligible or ineligible to be issued a license to operate a CDL driver training school or a license for a CDL driver training instructor. The board shall promulgate administrative regulations under KRS Chapter 13A specifying the offenses and conditions under which an application shall be denied based upon a criminal history background check.
- (4) Any fee charged by the *Department of* Kentucky State Police to conduct a criminal history background check shall be paid by the applicant and shall not be refundable if, based upon the background check, the board denies the person the right to be issued a license under this chapter. Any fee charged to conduct a criminal history background check shall be an amount not greater than the actual cost of processing the request and conducting the search.

Section 177. KRS 165A.470 is amended to read as follows:

- (1) A person shall not operate, conduct, maintain, or establish a CDL driver training school unless the person holds a valid current license issued by the board. The following persons shall not be allowed to be connected in any capacity whatsoever with a CDL driver training school:

- (a) Any person whose employment duties in any way relate to the issuance of a motor vehicle operator's license under KRS Chapter 186 or 281A;
 - (b) Any employee of the board, Justice *and Public Safety* Cabinet, or *Department of* Kentucky State Police; and
 - (c) Any member of the immediate family of persons identified in paragraphs (a) and (b) of this subsection.
- (2) A person shall not operate, conduct, maintain, or establish a CDL driver training school unless the school has:
- (a) At least one (1) licensed CDL driver training instructor in its employ; and
 - (b) At least one (1) commercial motor vehicle owned or leased in the name of the CDL driver training school that is properly registered in the Commonwealth and that has undergone a safety inspection within the past twelve (12) months.
- (3) A person shall not continue to operate a CDL driver training school if the board has suspended, revoked, canceled, or refused to renew the school's license.
- (4) A person shall not act as an instructor for a CDL driver training school unless the person holds a valid current license as an instructor issued by the board and unless the person is employed by a licensed CDL driver training school.

Section 178. KRS 165A.475 is amended to read as follows:

- (1) Any person seeking a license to operate, conduct, maintain, or establish a CDL driver training school shall apply to the board on forms prepared and furnished by the board. The application shall include the following information:
- (a) The title or name of the school, the names of the owners of the school, and, if the owner is to be a corporation, the names and addresses of the officers of the corporation;
 - (b) Except for corporations, a statement that the owners of the CDL driver training school are each twenty-one (21) years of age or over, are residents of this state, and have been for at least one (1) year next preceding the application for the CDL driver training school license, and are each of good moral character;
 - (c) A description of the established place of business together with the hours during which the CDL driver training school is conducted and a description of the equipment and facilities used in CDL driver training;
 - (d) Evidence of liability insurance coverage of the CDL driver training school, the instructor, and students of the CDL driver training school while operating driver training school equipment. The insurance shall have minimum limits of not less than twenty-five thousand dollars (\$25,000) for bodily injury or death of one (1) person in any one (1) accident and subject to the limit for any one (1) person, fifty thousand dollars (\$50,000) for bodily injury or death of two (2) or more persons in any one (1) accident and ten thousand dollars (\$10,000) for damage to the property of others in any one accident. Evidence of insurance coverage shall also provide that the insurance coverage shall not be canceled except after ten (10) days prior notice in writing by the carrier to the board. Upon request by an applicant, the board shall review an application and provide a letter to the applicant that a proposed CDL driver training school has met all preliminary requirements for approval, except the provisions of this paragraph. The letter may be used by the applicant to help secure the liability insurance coverage needed under this paragraph to obtain a license to operate a school. A letter provided under this paragraph shall not be construed as approval to perform CDL driver's training or to operate a school.
- (2) Each original application for a license to operate a CDL driver training school and each application for renewal of a license to operate a CDL driver training school shall be accompanied by the payment of a fee of two hundred dollars (\$200) to the board and written proof that the applicant has complied with the criminal history background check required by KRS 165A.465. The application fee charged under this subsection shall not be refundable if, based upon the background check, the board denies the person the right to be issued a license under this chapter.

- (3) The board shall pay the *Department of Kentucky* State Police to inspect and investigate CDL driver training schools under the requirements of subsection (4) of this section. The payment shall be an amount not greater than the actual cost of conducting the inspection and investigation.
- (4) Upon receipt of an application for a license to operate a CDL driver training school, the board shall request the *Department of Kentucky* State Police to investigate the person's program and verify the information contained in the application. The *Department of Kentucky* State Police shall contact the applicant and make an appointment to inspect the school's facilities. At the time of inspection, the *Department of Kentucky* State Police shall verify that the school meets the standards promulgated as administrative regulations under KRS Chapter 13A for license as a CDL driver training school. Upon request, the standards shall be furnished to the school by the board prior to the visit. If the standards are met, the school shall be licensed to offer instruction on how to operate a commercial motor vehicle including classifications, endorsements, and restrictions.
- (5) Any person seeking a license to act as a CDL driver training instructor shall apply to the board on forms prepared and furnished by the board setting forth that the applicant is twenty-one (21) years of age or older; is of good moral character; is a high school graduate or has the equivalent of a high school education, or has equivalent experience; and holds a current and valid operator's license.
- (6) Each original application for a license as a CDL driver training instructor and each application for renewal of a license as a CDL driver training instructor shall be accompanied by the payment of a fee of twenty dollars (\$20.00) to the board and written proof that the applicant has complied with the criminal history background check required by KRS 165A.465. The application fee charged under this subsection shall not be refundable if, based upon the background check, the board denies the person the right to be issued a license under this chapter.
- (7) In making the determination of good moral character under this section, the board shall consider but shall not be limited to the following:
 - (a) If the applicant has been convicted of a crime;
 - (b) The age of the applicant at the time any criminal conviction was entered;
 - (c) The length of time that has elapsed since the applicant's last criminal conviction; and
 - (d) The relationship of any crime convicted to the ability of the applicant to operate a CDL driver training school.

Section 179. KRS 174.055 is amended to read as follows:

There are hereby transferred to and vested in the secretary and cabinet all functions, powers, duties, funds, personnel, equipment and supplies relating to operators' licenses under provisions of KRS Chapter 186, boats and boating provisions of KRS Chapter 235, financial responsibility provisions of KRS Chapter 189, traffic safety coordinating committee under provisions of KRS Chapter 17, and motor vehicle inspection under provisions of KRS Chapter 189, which said provisions of law have been conferred upon the Department of Public Safety and under the commissioner and other officers and offices of said Department of Public Safety. The examination of applicants under KRS 186.480 shall be retained by the Department of *Kentucky* State Police.

Section 180. KRS 174.065 is amended to read as follows:

The cabinet shall:

- (1)~~[(a)]~~ Assist the Department of *Kentucky* State Police in coordinating all efforts of the state's various departments and agencies to promote traffic safety and in making recommendations regarding the prevention of unnecessary duplications of these efforts,~~and~~;
- (2)~~[(b)]~~ Cooperate with all organizations, public or private, in the encouragement and promotion of traffic safety education in all forms;~~and~~ and~~;~~
- (3)~~[(c)]~~ Receive, control and expend, in accordance with the general provisions of the Kentucky Revised Statutes governing financial administration of all state agencies, grants and funds from either public or private sources.

Section 181. KRS 174.410 is amended to read as follows:

- (1) The secretary shall be responsible for controlling and regulating the movement of all radioactive materials and the intrastate transport of other hazardous materials transported by all carrier modes within the Commonwealth.

- (2) The secretary, in consultation with the secretary of the Environmental and Public Protection Cabinet and the secretary of the Cabinet for Health and Family Services, shall adopt by reference or in entirety, the Federal Hazardous Materials Transportation Regulations, 49 C.F.R. (1978), as amended, to effectively carry out the intent of KRS 174.400 to 174.425.
- (3) The cabinet and the Justice *and Public Safety* Cabinet shall cooperate with and assist the Environmental and Public Protection Cabinet in implementing and enforcing the transportation provisions of any state hazardous waste regulations promulgated pursuant to KRS Chapter 224. The specific nature and details of the assistance effort shall be established by a formal cooperative agreement acceptable to the cabinets, and all activities shall occur in accordance with the terms of the agreement. The agreement shall address and include, but not necessarily be limited to, the following items:
 - (a) As a part of routine and periodic transportation checks and inspections, ensure that shipments of hazardous waste do not present a threat to the public or the environment; are accompanied by the required hazardous waste manifest or such other shipping or delivery documents as may be acceptable to the Environmental and Public Protection Cabinet; and comply with applicable shipping standards;
 - (b) Upon receipt of a written request from the secretary or general counsel of the Environmental and Public Protection Cabinet, actively conduct field investigations relating to the illegal, improper, or unauthorized transport of hazardous waste in the state. Such investigations may, at a minimum, include passive and active surveillance, apprehension, and reporting, with the scope and extent of each investigation to be previously agreed to by the involved cabinets;
 - (c) Compile and maintain such necessary records that may normally be required to carry out the provisions of this subsection and shall for minor violations report quarterly, and for major violations report weekly, to the Environmental and Public Protection Cabinet on the status of the interagency hazardous-waste transportation monitoring and enforcement activity for irregularities or violations;
 - (d) Provide any information, evidence, and other support, either in written form or in the form of oral testimony during a legal proceeding or both, as may be required by the Environmental and Public Protection Cabinet to fully carry out its statutory responsibility under the appropriate sections of KRS Chapter 224;
 - (e) The Environmental and Public Protection Cabinet shall, unless specifically agreed otherwise, have primary responsibility for initiating and conducting all legal proceedings arising from the terms and provisions of this subsection; and
 - (f) The Environmental and Public Protection Cabinet shall provide sufficient training, technical assistance, and other support to the appropriate cabinets to prepare representatives of the cabinets to adequately carry out the responsibilities set forth in this subsection.

Section 182. KRS 174.420 is amended to read as follows:

- (1) Any person transporting hazardous materials in the Commonwealth shall carry a copy of the shipping papers required in 49 C.F.R. (1978), as amended, in the transporting vehicle while in the Commonwealth.
- (2) In the event of an accident involving hazardous material, the operator of the vehicle shall:
 - (a) Notify the *Department of* Kentucky State Police of the accident within one (1) hour, who shall then notify the local jurisdiction and any other appropriate state agency with emergency action responsibility, and
 - (b) Provide the shipping papers to state and local emergency response authorities, and immediately bring to their attention the fact that the vehicle is transporting hazardous materials.
- (3) In addition to the other requirements of this section, any person transporting hazardous wastes shall carry in the transporting vehicle a copy of a manifest in a form approved by the Environmental and Public Protection Cabinet.

Section 183. KRS 175.480 is amended to read as follows:

Every project of the authority shall be open to regular policing by the *Department of Kentucky* State Police as in the case of other public highways of the Commonwealth.

Section 184. KRS 176.506 is amended to read as follows:

- (1) The Motorcycle Advisory Commission for Highway Safety shall be composed of seven (7) members, appointed as follows:
 - (a) One (1) representative of the Office of Construction and Operations within the Kentucky Transportation Cabinet's Department of Highways, appointed by the Governor;
 - (b) One (1) representative of the Office of Project Development within the Kentucky Transportation Cabinet's Department of Highways, appointed by the Governor;
 - (c) One (1) representative of the *Department of* Kentucky State Police, appointed by the Governor;
 - (d) Two (2) representatives of the Kentucky Motorcycle Association, to be appointed by the Governor from a list of five (5) nominees selected by the association;
 - (e) One (1) member of the Kentucky Motorcycle Safety Education Advisory Commission, appointed by the Governor; and
 - (f) One (1) representative of the Kentucky Association of Highway Contractors, to be appointed by the Governor from a list of five (5) nominees selected by the association.
- (2) Except for initial appointments as provided for in 2003 Ky. Acts ch. 122, sec. 3, members of the Motorcycle Advisory Commission for Highway Safety shall serve a term of four (4) years. Sitting members shall be eligible to succeed themselves.
- (3) Commission members shall receive no compensation for their services, and shall not be compensated for expenses incurred from travel or in connection with the performance of their duties as commission members.
- (4) The commission shall elect its chair and vice chair from its membership.
- (5) The commission shall meet quarterly or upon the call of the chair or the request of the secretary of the Transportation Cabinet.
- (6) A majority of the members of the commission constitutes a quorum and the commission may make recommendations only at meetings where a quorum is present.
- (7) The commission shall keep a record of its meetings and recommendations.
- (8) For administrative purposes, the commission shall be attached to the Transportation Cabinet's Office of the Secretary.

Section 185. KRS 177.074 is amended to read as follows:

- (1) Every road which is part of the state primary system shall be identified by a specific route number or name which shall be designated on the official state road map. In addition to a route number, the secretary:
 - (a) Shall name a road or road segment to comply with the provisions of subsections (2) and (3) of this section; and
 - (b) May, at the secretary's discretion, or subject to the provisions of subsection (4) of this section, name a road or bridge on the state highway system after an individual, historic event, or any other name which may be of significance to the history of this Commonwealth or any of its counties or communities.
- (2) The secretary shall, within thirty (30) days of receipt of a written request by the commissioner of the *Department of* Kentucky State Police, name a state road or segment of a state road in memory and honor of one (1) or more Kentucky state troopers killed in the line of duty. The written request shall comply with the provisions of subsection (4) of this section and shall include:
 - (a) The trooper's name;
 - (b) The name and address of any living relatives of the trooper, if known;
 - (c) Date and circumstances of the trooper's death; and
 - (d) The route number and current name of the state road where the trooper was killed if applicable, or the route number and current name of the state road closest to the deceased trooper's home.
- (3) The written request required under subsection (2) of this section shall identify the route number, current name of the state road, or milepoints of the specific segment of state road the *Department of* Kentucky State Police

are requesting be named in honor and memory of a state trooper killed in the line of duty. The road or road segment identified in the request shall be either the state road where the trooper was killed, or the state road closest to the deceased trooper's home. The cabinet shall consult with the commissioner of the **Department of Kentucky State Police** on the design of the road signs naming the state road or road segment in honor and memory of each trooper, and the cabinet shall erect the appropriate highway signs within thirty (30) days of receipt of the written request required under subsection (2) of this section.

- (4) If the road segment identified in the request under subsection (2) of this section has already been named for another individual or organization, either by action of the General Assembly or by order of the secretary, the **Department of Kentucky State Police** and the cabinet shall consult on and determine an alternate location that is acceptable to both agencies.
- (5) The secretary shall be petitioned by a unit of local government, civic organization, or other interested party before naming a road or bridge on the state primary road system. In addition, the secretary shall be convinced by the petitioner that the person or event that the road or bridge is being named for is of civic or historical significance.
- (6) Except as provided in subsections (9) and (10) of this section, the secretary shall name a road or bridge upon direction by joint resolution of the General Assembly. Upon introduction of a resolution, the secretary shall inform the chairman of the committee to which the resolution is assigned as to whether he *or she* has been petitioned to name a road or bridge presented in the resolution and if so petitioned, his *or her* reasons for not taking action on the request.
- (7) If the secretary grants the request to name a road or bridge through petition, the signs to be placed on the roads shall become the responsibility of the petitioner with the design and placement of the signs approved by the department. If the signs are to be placed as a result of a resolution passed by the General Assembly, the responsibility for placement of the signs shall be upon the Department of Highways.
- (8) The Transportation Cabinet may adopt administrative regulations to implement the road and bridge naming program. The administrative regulations shall at a minimum establish basic standards for design and placement of signs or allow the local entity to reimburse the Transportation Cabinet for the cost of manufacturing and installing the signs for which a petition has been granted.
- (9) The new proposed truck bypass around Mayfield, Kentucky, shall be named the "Dick Castleman Bypass," after former State Representative Dick Castleman.
- (10) The bridge on United States Highway 27 over the Kentucky River near Camp Nelson, between Jessamine and Garrard Counties, shall be named the "Lloyd Murphy Memorial Bridge."

Section 186. KRS 177.530 is amended to read as follows:

- (1) Each turnpike project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the department, and shall be operated and maintained by such force of toll-takers and other operating and maintenance employees and, unless policed by the **Department of Kentucky State Police** as an ordinary incident to the performance of statutory functions, shall be policed by the department by such force of police, as the department may in its discretion employ, and the department may be reimbursed for the cost thereof unless it has previously assumed such cost as provided in KRS 177.480.
- (2) All private property damaged or destroyed in carrying out the powers granted by KRS 177.390 to 177.570 shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of KRS 177.390 to 177.570.
- (3) All counties, cities, towns and other political subdivisions and all public agencies and commissions of the Commonwealth, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the department at its request upon such terms and conditions as the proper authorities of such counties, cities, towns, political subdivisions, agencies or commissions of the Commonwealth may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the department, including public roads and other real property already devoted to public use.
- (4) On or before January 30 in each year the department shall make an annual report of its activities for the preceding calendar year to the Governor and to the General Assembly. Each such report shall set forth a

complete operating and financial statement covering its operations during the year. The department shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or operation of the project. Such audits shall be deemed to be public records within the meaning of KRS 61.870(2).

- (5) No officer or employee of the department shall have any interest, direct or indirect, in the sale or purchase of any bonds authorized by KRS 177.390 to 177.570. Violation of this provision is punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one (1) year, or both.
- (6) Any person who uses any turnpike project and fails or refuses to pay the toll provided therefor shall be punished by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than thirty (30) days, or both, and in addition thereto the department shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof until the amount of such toll and all charges and penalties in connection therewith shall have been paid.

Section 187. KRS 183.881 is amended to read as follows:

- (1) Safety and security officers so appointed shall be peace officers and conservators of the peace. They shall have general police powers to arrest, without process, all persons who within their view commit any crime or misdemeanor. They shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, except that they shall be empowered to serve civil process to the extent authorized by the employing airport board. Without limiting the generality of the foregoing, such safety and security officers are hereby specifically authorized and empowered, and it shall be their duty:
 - (a) To preserve the peace, maintain order and prevent unlawful use of force or violence or other unlawful conduct on the airport facility of their respective airport board, and to protect all persons and property located thereon from injury, harm and damage;
 - (b) To enforce, and to assist officials of their respective airport boards in the enforcement of the lawful rules and regulations of said airport board, and to assist and cooperate with the law enforcement agencies and officers.

Provided, however, that such safety and security officers shall exercise the powers herein granted upon any real property owned or occupied by their respective airport boards including the streets passing through and adjacent thereto. Said powers may be exercised in any county of the Commonwealth where the airport board owns, uses, or occupies property. Additional jurisdiction may be established by agreement with the chief of police of the municipality or sheriff of the county or the appropriate law enforcement agency in which such property is located, dependent upon the jurisdiction involved.

- (2) Safety and security officers may exercise their powers away from the locations described in subsection (1) of this section only upon the following conditions:
 - (a) When in hot pursuit of an actual or suspected violator of the law; or
 - (b) When authorized to do so pursuant to the agreement authorized by subsection (1) of this section; or
 - (c) When requested to act by the chief of police of the city or county in which the airport board's property is located; or
 - (d) When requested to act by the sheriff of the county in which the airport board's property is located; or
 - (e) When requested to act by the ~~commissioner~~**director** of the **Department of Kentucky** State Police; or
 - (f) When requested to act by the authorized delegates of those persons or agencies listed in (c), (d) or (e) above; or
 - (g) When requested to assist a state, county or municipal police officer, sheriff, or other peace officer in the performance of his **or her** lawful duties; or
 - (h) When operating under an interlocal cooperation agreement pursuant to KRS Chapter 65.
- (3) Safety and security officers appointed pursuant to KRS 183.110 and 183.880 to 183.886 shall have, in addition to the other powers enumerated herein, the power to conduct investigations anywhere in this Commonwealth, provided such investigation relates to criminal offenses which occurred on property owned, leased, or controlled by the airport board. Where desirable and at the discretion of the airport board's police officials, the

airport board's safety and security department may coordinate said investigations with any law enforcement agency of this Commonwealth or with agencies of the federal government.

- (4) Safety and security departments created and operated by the airport boards shall, for all purposes, be deemed public police departments and the sworn safety and security officers thereof are, for all purposes, deemed public police officers.
- (5) Nothing in KRS 183.110 and 183.880 to 183.886 shall be construed as a diminution or modification of the authority or responsibility of any city or county police department, the *Department of* Kentucky State Police, sheriff, constable, or other peace officer either on the property of an airport board or otherwise.

Section 188. KRS 183.884 is amended to read as follows:

- (1) Vehicles used for emergency purposes by the safety and security department of an airport board shall be considered as emergency vehicles and shall be equipped with blue lights and sirens and shall be operated in conformance with the requirements of KRS Chapter 189.
- (2) Safety and security departments of the airport boards may install, maintain, and operate radio systems on police or other frequencies under licenses issued by the Federal Communications Commission, or its successor.
- (3) Safety and security departments of airport boards shall comply with the requirements of the Kentucky Revised Statutes and the Justice *and Public Safety* Cabinet with regard to reporting of criminal and other statistics.

Section 189. KRS 186.005 is amended to read as follows:

- (1) It is declared to be the policy of this Commonwealth that all commercial vehicles should be regulated, registered, and the laws pertaining thereto be administered by the Transportation Cabinet. Motor vehicles other than commercial vehicles should be registered, regulated, and controlled by the Transportation Cabinet and the Justice *and Public Safety* Cabinet.
- (2) All motor vehicles registered under the provisions of KRS 186.050(1) shall be on an annual basis and evidenced by a license plate whose registration designation is a combination of three (3) letters of the alphabet and three (3) Arabic numerical digits. These registration plates shall be issued for use during a multiyear period and validated for continued use the following year, or years, by affixing an appropriate insignia of plastic or adhesive material bearing the date of the new year.
- (3) All motor vehicles registered under the provisions of KRS 186.050(3)(a), (4)(a), (5), (6), or (11) shall have registration plates issued for use during a multiyear period and validated for continued use the following year, by affixing an appropriate insignia of plastic or adhesive material bearing the date of the new year.
- (4) The Transportation Cabinet may promulgate regulations and prepare the proper insignia and forms, which forms shall include information required by the Transportation Cabinet.

Section 190. KRS 186.180 is amended to read as follows:

- (1)
 - (a) If the owner loses his *or her* copy of a registration or transfer receipt, he *or she* may obtain a duplicate from the county clerk who issued the present owner's copy of the receipt by presenting the clerk proof of insurance on the motor vehicle in compliance with KRS 304.39-080, and by filing an affidavit, upon a form furnished by the cabinet. The owner shall pay to the clerk a fee of three dollars (\$3), except proof of insurance shall not be required for duplicates applied for by motor vehicle dealers as defined in KRS 190.010.
 - (b) When the owner's copy of any registration or transfer receipt shows that the spaces provided thereon for noting and discharging security interests have been exhausted, the owner may apply to the county clerk who issued the receipt in order to obtain a duplicate thereof. The owner shall surrender his *or her* copy of the current receipt to the clerk and provide proof of insurance on the motor vehicle in compliance with KRS 304.39-080, before a duplicate may be issued. The owner shall pay the clerk a fee of three dollars (\$3), except proof of insurance shall not be required for duplicates applied for by motor vehicle dealers as defined in KRS 190.010.
 - (c) Any security interest which has been discharged as shown by the records of the clerk or upon the owner's copy of the current receipt shall be omitted from the duplicate receipt to be issued by the clerk.

- (2) If the owner loses a registration plate, he *or she* shall surrender his *or her* registration receipt to the county clerk from whom it was obtained and file a written statement as to the loss of the plate. Upon presenting the clerk proof of insurance on the motor vehicle in compliance with KRS 304.39-080, and upon the payment of the sum of three dollars (\$3) for each plate and a fee of three dollars (\$3) to the clerk for his *or her* services, the owner shall be issued another registration receipt and a plate or plates which shall bear a different number from that of the lost plate. The clerk shall retain the owner's statement and a copy of the owner's proof of insurance, and shall make a notation on the triplicate copy of the surrendered registration receipt stating the number of the registration receipt replacing it. The original copy of the surrendered receipt shall be forwarded to the cabinet. The cabinet shall forthwith cancel the registration corresponding to the number of the lost plate. The cancellation shall be reported by the cabinet to the commissioner of the Department of **Kentucky** State Police. Any person finding a lost registration plate shall deliver it to the Transportation Cabinet or to any county clerk for forwarding it to the cabinet.
- (3) If the owner moves from one (1) county into another county of the Commonwealth, he *or she* may obtain a registration plate bearing the name of the county of residence. In order to obtain a new registration plate, the owner shall surrender his *or her* current registration receipt and current registration plate to the county clerk. Upon being provided with proof of insurance on the motor vehicle in compliance with KRS 304.39-080, the clerk shall provide the owner with a new registration receipt and plate bearing the county name. The surrendered receipt and plate shall be forwarded to the Transportation Cabinet. The fee for this registration shall be five dollars (\$5) of which the clerk shall be entitled to three dollars (\$3) and the cabinet shall be entitled to two dollars (\$2).
- (4) If the owner's registration is revoked as a result of the provisions set forth in KRS 186A.040, the owner may have his *or her* registration reinstated by the county clerk who issued the present owner's copy of the receipt by presenting the clerk proof of:
 - (a) Insurance on the motor vehicle in compliance with KRS 304.39-080 and by filing an affidavit upon a form furnished by the cabinet; or
 - (b) A valid compliance or exemption certificate in compliance with KRS 224.20-720 or issued under the authority of an air pollution control district under KRS 224.20-760.
- (5) The owner of a motor vehicle that has the vehicle's registration revoked under KRS 186.290 shall pay to the clerk a fee of twenty dollars (\$20), which shall be equally divided between the county clerk and the cabinet.
- (6) On and after January 1, 2006, if the motor vehicle is a personal motor vehicle as defined in KRS 304.39-087, proof of insurance required under this section shall be determined by the county clerk as provided in KRS 186A.042.

Section 191. KRS 186.181 is amended to read as follows:

The secretary of the Transportation Cabinet shall, upon receipt of a report from the Transportation Cabinet or the Department of Vehicle Regulation of a canceled motor vehicle registration plate, cause all members of the **Department of Kentucky** State Police and such peace officers as he *or she* may deem necessary, to be notified of the cancellation. It shall be the duty of all members of the **Department of Kentucky** State Police and of all peace officers to seize any registration plate bearing a canceled number and to report such seizure to the appropriate department.

Section 192. KRS 186.412 is amended to read as follows:

- (1) A person who has attained the age of eighteen (18) years and is under the age of twenty-one (21) at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least one hundred eighty (180) days. A person who is at least twenty-one (21) years of age at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least thirty (30) days.
- (2) Except as provided in subsection (4) of this section, a person shall apply for an operator's license in the office of the circuit clerk of the county where the person lives. The application form shall require the person's:
 - (a) Full legal name and signature;
 - (b) Date of birth;
 - (c) Social Security number, federal tax identification number, a letter from the Social Security Administration declining to issue a Social Security number, or a notarized affidavit from the applicant to

the Transportation Cabinet swearing that the person either does not have a Social Security number, or refuses to divulge his or her Social Security number, based upon religious convictions;

- (d) Sex;
 - (e) Present Kentucky resident address, exclusive of a post office box address alone;
 - (f) Other information necessary to permit the application of United States citizens to also serve as an application for voter registration;
 - (g) A brief physical description of the applicant;
 - (h) A statement if the person has previously been licensed as an operator in another state;
 - (i) Proof of the person's Kentucky residency, including but not limited to a deed or property tax bill, utility agreement or utility bill, or rental housing agreement; and
 - (j) Other information the cabinet may require by administrative regulation promulgated under KRS Chapter 13A.
- (3) A permanent resident shall present one (1) of the following documents issued by the United States Department of Justice, Immigration and Naturalization Service:
- (a) An I-551 card with a photograph of the applicant; or
 - (b) A form with the photograph of the applicant or a passport with a photograph of the applicant on which the United States Department of Justice, Immigration and Naturalization Service has stamped the following: "Processed for I-551. Temporary evidence of lawful admission for permanent residence. Valid until -----. Employment authorized."
- (4) If the person is not a United States citizen and has not been granted status as a permanent resident of the United States, the person's application for an original operator's license shall be submitted to either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.
- (a) The application form shall be accompanied by the person's documentation issued by the United States Department of Justice, Immigration and Naturalization Service, authorizing the person to be in the United States and, if applicable, the person's international driving permit. The application form of a special status individual with a K-1 status shall be accompanied by an original or certified copy of the person's completed marriage license signed by the official who presided over the marriage ceremony and two (2) witnesses. The application form of a special status individual with a K-1 status shall also include the person's petition to enter the United States for the purpose of marriage that contains the name of the prospective spouse. If the name of the prospective spouse on the petition does not match the name of the spouse on the marriage license, the Transportation Cabinet shall not be required to issue an operator's license.
 - (b) The Transportation Cabinet shall, within fifteen (15) days of receipt of the application, review the person's documentation and determine if the person will be issued a Kentucky operator's license. If the review of an application will take longer than fifteen (15) days, the cabinet shall continue the review, but the cabinet shall be required to make a determination in all cases within thirty (30) days of receipt of the application.
 - (c) If the cabinet determines the person may be issued an operator's license, the cabinet shall issue the person an official form that the person shall take to the office of the circuit clerk of the county where the person resides. The circuit clerk shall review the person's documentation and the official form issued by the Transportation Cabinet. If the documentation is verified as accurate, and if the person successfully completes the examinations required under KRS 186.480, the circuit clerk shall issue the person a Kentucky operator's license.
 - (d) Except as provided in paragraphs (e) and (f) of this subsection, a person who is not a United States citizen and who has not been granted status as a permanent resident of the United States shall apply to renew an operator's license, or obtain a duplicate operator's license, in the office of the circuit clerk in the county in which the person resides.
 - (e) If a person is renewing an operator's license or is applying for a duplicate license after July 15, 2002, and the person's documentation issued by the United States Department of Justice, Immigration and

Naturalization Service, has not been reviewed by the either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office under the provisions of this subsection, the person shall be required to apply for the renewal or duplicate with either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.

- (f) If a person has any type of change in the person's immigration status, the person shall apply to renew an operator's license with either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.
- (5) The circuit clerk shall issue an operator's license bearing a color photograph of the applicant and other information the cabinet may deem appropriate. The photograph shall be taken by the circuit clerk so that one (1) exposure will photograph the applicant and the application simultaneously. When taking the photograph, the applicant shall be prohibited from wearing sunglasses or any other attire that obscures any features of the applicant's face as determined by the clerk. The clerk shall require an applicant to remove sunglasses or other obscuring attire before taking the photograph required by this subsection. Any person who refuses to remove sunglasses or other attire prohibited by this section as directed by the clerk shall be prohibited from receiving an operator's license. The operator's license issued by the cabinet shall not contain the applicant's Social Security number. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A that develop a numbering system that uses an identification system other than Social Security numbers. If an applicant does not have a Social Security number, or the applicant has submitted a notarized affidavit refusing to divulge his or her Social Security number based upon religious convictions, the Transportation Cabinet shall assign the applicant a unique identifying number. The license shall also designate by color coding and use the phrase "under 21" if the licensee is under the age of twenty-one (21); "CDL" if the license is issued pursuant to KRS Chapter 281A; or "under 21 CDL" if the licensee holds a commercial driver's license issued pursuant to KRS Chapter 281A and is under the age of twenty-one (21).
- (6) Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained in the form.
- (7)
 - (a) Except as provided in subsection (8) of this section, the circuit clerk shall issue a color photo personal identification card to any person who is a Kentucky resident and who resides in the county who complies with the provisions of this section and who applies in person in the office of the circuit clerk. An application for a personal identification card shall be accompanied by the same information as is required for an operator's license under subsection (2) of this section, except if a person does not have a fixed, permanent address, the person may use as proof of residency a signed letter from a homeless shelter, health care facility, or social service agency currently providing the person treatment or services and attesting that the person is a resident of Kentucky.
 - (b) It shall be permissible for the application form for a personal identification card to include as a person's most current resident address a mailing address, post office box, or an address provided on a voter registration card.
 - (c) Every applicant for a personal identification card shall make an oath to the circuit clerk as to the truthfulness of the statements contained on the application form. If the applicant is not the legal owner or possessor of the address provided on the application form, the applicant shall swear that he or she has permission from the legal owner, authorized agent for the legal owner or possessor to use the address for purposes of obtaining the personal identification card. The personal identification card shall designate by color coding and by use of the phrase "under 21" if the applicant is under the age of twenty-one (21).
 - (d) A personal identification card shall be valid for a period of four (4) years from the date of issuance. Except as provided in this subsection, an initial or renewal personal identification card issued to a person who is not a United States citizen and who has not been granted status as a permanent resident of the United States and who is not a special status individual, but who is a Kentucky resident, shall be valid for a period equal to the length of time the person's documentation from the United States Department of Justice, Immigration and Naturalization Service is issued, or four (4) years, whichever time period is shorter. An initial or renewal personal identification card shall be valid for a period of two (2) years if the person is not a special status individual and the person's documentation issued by the United States Department of Justice, Immigration and Naturalization Service, is issued for an indefinite period of time and does not have an expiration date. The fee shall be the same as for a regular personal identification card.

- (e) A personal identification card may be suspended or revoked if the person who was issued the card presents false or misleading information to the cabinet when applying for the card.
- (8) A person may be issued a personal identification card if the person currently holds a valid Kentucky instruction permit or operator's license. If a person's instruction permit or operator's license has been suspended or revoked, the person may be issued a temporary personal identification card. A temporary personal identification shall be renewed annually and may be surrendered when the person applies to have his or her instruction permit or operator's license reinstated.
- (9) The Transportation Cabinet shall implement a voluntary statewide child identification program. The program shall issue a color photo personal identification card to a child two (2) to fifteen (15) years of age. Application for a child identification card shall be accompanied by a Social Security card and a birth certificate for the child, or other proof of the child's date of birth as provided under subsection (2) of this section. The card shall contain the child's name and the toll-free number of the Kentucky Missing Persons Clearinghouse, **Department of** Kentucky State Police. The card shall not contain the child's Social Security number. The cabinet shall set a four dollar (\$4) fee for the child identification card. Two dollars (\$2) of the fee shall be used to cover the cabinet's cost for equipment and supplies. Two dollars (\$2) of the fee shall be an administrative fee of the circuit clerk for issuing the card which shall be deposited by the Administrative Office of the Courts into a trust and agency account for the circuit clerks and used for the purposes of hiring additional deputy clerks and providing salary adjustments to deputy clerks. The card shall expire every four (4) years on the child's birthday. Within the time period that the child identification card is valid, the card may be updated with a new photograph and information. The fee for an updated card shall be four dollars (\$4), with two dollars (\$2) of the fee going to the cabinet and two dollars (\$2) going to the Administrative Office of the Courts in the same manner as the fee for an initial card as described in this subsection. The descriptive data and a photo image of the child shall be stored in the Kentucky Driver's License Information System and may be retrieved and used by public agencies subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. sec. 2721, and may also be used by the Kentucky Missing Persons Clearinghouse.
- (10) If a citizen of the Commonwealth currently serving in the United States military is stationed or assigned to a base or other location outside the boundaries of the Commonwealth, the citizen may renew a Class D operator's license issued under this section by mail. If the citizen was issued an "under 21" operator's license, upon the date of his or her twenty-first birthday, the "under 21" operator's license may be renewed for an operator's license that no longer contains the outdated reference to being "under 21."
- (11) A citizen of the Commonwealth renewing an operator's license by mail under subsection (10) of this section may have a personal designee apply to the circuit clerk on behalf of the citizen to renew the citizen's operator's license. An operator's license being renewed by mail under subsection (10) of this section shall be issued a license without a photograph. The license shall show in the space provided for the photograph the legend "valid without photo and signature."
- (12) If a citizen of the Commonwealth has been serving in the United States military and has allowed his operator's license to expire, he shall, within ninety (90) days of returning to the Commonwealth, be permitted to renew his license without having to take a written test or road test. A citizen who does not renew his license within ninety (90) days of returning to the Commonwealth shall be required to comply with the provisions of this chapter governing renewal of a license that has expired. If a citizen of the Commonwealth has been issued an "under 21" or "under 21 CDL" operator's license and the person is unable to renew the license on the date of his twenty-first birthday, the "under 21" or "under 21 CDL" operator's license shall be valid for ninety (90) days beyond the date of the person's twenty-first birthday.
- (13) The cabinet shall provide on each license to operate motor vehicles, motorcycles, and mopeds a space for the licensed driver's:
 - (a) Blood type;
 - (b) Medical insignia if the person provides evidence that a medical identification bracelet noting specific physical ailments or a drug allergy is being worn or other proof as may be required by the cabinet; and
 - (c) A statement whereby the owner of the license may certify in the presence of two (2) witnesses his willingness to make an anatomical gift under KRS 311.195.

- (14) If the motor vehicle operator denotes a physical ailment or drug allergy on the operator's license, he may apply for and shall receive, for a fee of one dollar (\$1) paid to the circuit clerk, a medical insignia decal that may be affixed to the lower left side of the front windshield of a motor vehicle.
- (15) An operator's license pursuant to this section shall be designated a Class D license.
- (16) A person shall not have more than one (1) license.
- (17) Upon marriage, a woman applying for an operator's license or a color photo personal identification card shall provide the circuit clerk with her marriage license and complete an affidavit form provided by the circuit court clerk. She shall have the following choices in regard to her full legal name as required in subsections (2) and (7) of this section:
 - (a) Use her husband's last name;
 - (b) Retain her maiden name;
 - (c) Use her maiden name hyphenated with her husband's last name;
 - (d) Use her maiden name as a middle name and her husband's last name as her last name; or
 - (e) In the case of a previous marriage, retain that husband's last name.
- (18) Upon issuing an operator's license or personal identification card, the clerk shall draw the recipient's attention to the location on the license relating to anatomical gifts under subsection (13)(c) of this section and offer to allow personnel in the clerk's office to serve as the witnesses to the recipient's certification of willingness to make an anatomical gift if the recipient is the person to whom the license is issued.

Section 193. KRS 186.440 is amended to read as follows:

An operator's license shall not be granted to:

- (1) Any person who is not a resident of Kentucky;
- (2) Any person under the age of sixteen (16);
- (3) Any person under the age of eighteen (18) who holds a valid Kentucky instruction permit issued pursuant to KRS 186.450, but who has not graduated from high school or who is not enrolled and successfully participating in school or who is not being schooled at home, except those persons who satisfy the District Court of appropriate venue pursuant to KRS 159.051(3) that revocation of their license would create an undue hardship. Persons under the age of eighteen (18) shall present proof of complying with the requirements of KRS 159.051;
- (4) Any person whose operator's license has been suspended, during the period of suspension, subject to the limitations of KRS 186.442;
- (5) Any person whose operator's license has been revoked, nor to any nonresident whose privilege of exemption under KRS 186.430 has been refused or discontinued, until the expiration of the period for which the license was revoked, or for which the privilege was refused or discontinued;
- (6) Any applicant adjudged incompetent by judicial decree;
- (7) Any person who in the opinion of the *Department of Kentucky* State Police, after examination, is unable to exercise reasonable and ordinary control over a motor vehicle upon the highways;
- (8) Any person who is unable to understand highway warnings or direction signs in the English language;
- (9) Any person required by KRS 186.480 to take an examination who has not successfully passed the examination;
- (10) Any person required by KRS Chapter 187 to deposit proof of financial responsibility, who has not deposited that proof;
- (11) Any person who has not filed a correct and complete application attested to in the presence of a person authorized to administer oaths;
- (12) Any person who cannot meet the requirements set forth in KRS 186.411(1) or (3); or
- (13) Any person whose operator's license has been suspended or revoked under the provisions of KRS Chapter 186, 187, or 189A until the person has forwarded to the cabinet a reinstatement fee of fifteen dollars (\$15). The fee shall be paid by certified check or money order payable to the State Treasurer who shall deposit five dollars

(\$5) of the fee in a trust and agency fund to be used in defraying the costs and expenses of administering a driver improvement program for problem drivers. Ten dollars (\$10) of the fee shall be deposited by the State Treasurer in a trust and agency account to the credit of the Administrative Office of the Courts and shall be used to assist circuit clerks in hiring additional employees, providing salary adjustments for employees, providing training for employees, and purchasing additional equipment used in administering the issuance of driver's licenses. The provisions of this subsection shall not apply to any person whose license was suspended for failure to meet the conditions set out in KRS 186.411 when, within one (1) year of suspension, the driving privileges of the individuals are reinstated or to any student who has had his *or her* license revoked pursuant to KRS 159.051.

Section 194. KRS 186.452 is amended to read as follows:

- (1) Beginning April 1, 2007, a person who is at least sixteen and one-half (16-1/2) years of age may apply for an intermediate license to operate a motor vehicle if the person has:
 - (a) Held an instruction permit a minimum of one hundred eighty (180) days without a violation under KRS 186.450(4), (5), or (6), a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, or a conviction for a violation of KRS 189A.010(1); and
 - (b) Presented a statement to the **Department of Kentucky** State Police signed by a parent or guardian of the applicant attesting that the applicant has completed at least sixty (60) hours of supervised driving experience, including at least ten (10) hours at night, while accompanied by a person who has attained the age of twenty-one (21) years and holds a valid operator's license occupying the seat beside the applicant.
- (2) If an applicant for an intermediate license successfully completes the examinations required under KRS 186.480, the **Department of Kentucky** State Police shall affix an intermediate license sticker to the instruction permit and report the applicant's new status to the Transportation Cabinet. The Transportation Cabinet shall update the information in its computer system to reflect that the applicant has been granted an intermediate license. An intermediate license shall be valid for two (2) years and may be renewed.
- (3) A person shall have the intermediate license in his or her possession at all times when operating a motor vehicle.
- (4) A person with an intermediate license who is under the age of eighteen (18) years shall not operate a motor vehicle, motorcycle, or moped between the hours of 12 midnight and 6 a.m. unless the person can demonstrate good cause for driving, including emergencies, involvement in school-related activities, or involvement in work-related activities.
- (5) Except when accompanied by a driver training instructor affiliated with a driver training school licensed under KRS Chapter 332 or a public or nonpublic secondary school, a person with an intermediate license who is under the age of eighteen (18) years shall not operate a motor vehicle at any time when accompanied by more than one (1) unrelated person who is under the age of twenty (20) years. A peace officer shall not stop or seize a person nor issue a uniform citation for a violation of this subsection if the officer has no other cause to stop or seize the person other than a violation of this subsection. This subsection shall not apply to any operator of a vehicle registered under the provisions of KRS 186.050(4) who is engaged in agricultural activities.
- (6) A violation under subsection (3), (4), or (5) of this section, a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, or a conviction for a violation of KRS 189A.010(1) shall add an additional minimum of one hundred eighty (180) days from the date of the violation before a person who is under the age of eighteen (18) years may apply for an operator's license.

Section 195. KRS 186.480 is amended to read as follows:

- (1) The **Department of Kentucky** State Police shall examine every applicant for an operator's license as identified in KRS 186.6401, except as otherwise provided in this section. The examination shall be held in the county where the applicant resides unless:
 - (a) The applicant is granted written permission by the circuit clerk of the county in which he *or she* resides to take the examination in another county, and the **Department of Kentucky** State Police agree to arrange for the examination in the other county; or
 - (b) The applicant is tested using a bioptic telescopic device.

- (2) The examination shall include a test of the applicant's eyesight to ensure compliance with the visual acuity standards set forth in KRS 186.577. The examination shall also include a test of the applicant's ability to read and understand highway signs regulating, warning and directing traffic, the applicant's knowledge of traffic laws and an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle. An applicant for a motorcycle operator's license shall be required to show his *or her* ability to operate a motorcycle, in addition to other requirements of this section. The provisions of this subsection shall not apply to an applicant who:
 - (a) At the time of application, holds a valid operator's license from another state, provided that state affords a reciprocal exemption to a Kentucky resident; or
 - (b) Is a citizen of the Commonwealth who has been serving in the United States military and has allowed his *or her* operator's license to expire.
- (3) Any person whose intermediate license or operator's license is denied, suspended, or revoked for cause shall apply for reinstatement at the termination of the period for which the license was denied, suspended, or revoked by submitting to the examination. The provisions of this subsection shall not apply to any person whose license was suspended for failure to meet the conditions described in KRS 186.411 when, within one (1) year of suspension, the driving privileges of such individuals are reinstated.

Section 196. KRS 186.495 is amended to read as follows:

The circuit clerk of each county shall maintain an alphabetical index of all persons to whom operators' licenses and motorcycle operators' licenses have been issued in his county, which index shall be sufficient to enable the prompt locating of the complete license record of each of such persons. Such index shall at all times be available for inspection by the *Department of Kentucky* State Police and other officers charged with the duty of enforcing highway laws.

Section 197. KRS 186.510 is amended to read as follows:

The licensee shall have his *or her* license in his *or her* immediate possession at all times when driving a motor vehicle and shall display it upon demand to the circuit clerk or examiner, a peace officer, a member of the *Department of Kentucky* State Police, or a field deputy or inspector of the Department of Vehicle Regulation or Transportation Cabinet or, pursuant to KRS 67A.075 or 83A.088, a safety officer who is in the process of securing information to complete an accident report. It shall be a defense to any charge under this section if the person so charged produces in court an operator's license, issued to him *or her* before his *or her* arrest and valid at the time of his *or her* arrest.

Section 198. KRS 186.577 is amended to read as follows:

- (1) All persons applying for an initial operator's license or an initial instruction permit shall submit to a test of visual acuity and visual field at the time of application.
- (2) Persons whose visual acuity is 20/40 or better without corrective lenses shall not have a restriction placed on their driving privileges. Persons whose visual acuity is 20/40 or better with corrective lenses shall have their driving privileges restricted to mandate the use of the corrective lenses. If a person fails to meet a 20/40 visual acuity standard, the *Department of Kentucky* State Police shall refer the person to a vision specialist for examination.
- (3) A person referred to a vision specialist by the *Department of Kentucky* State Police under subsection (2) of this section whose visual acuity is 20/60 or better shall be eligible to test for an instruction permit or operator's license. If corrective lenses were prescribed by the vision specialist, the person's driving privileges shall be restricted to mandate the use of the corrective lenses.
- (4) Persons who meet the requirements of KRS 186.578 and are issued operator's licenses under KRS 186.579 shall have their driving privileges restricted to the use of a bioptic telescopic device.

Section 199. KRS 186.578 is amended to read as follows:

- (1) Applicants accepted to participate in a certified driver training program shall meet the following minimum vision requirements:
 - (a) A distance visual acuity of 20/200 or better, with corrective lenses, in the applicant's better eye;
 - (b) A visual field of at least one hundred twenty (120) degrees horizontally and eighty (80) degrees vertically in the same eye as used in paragraph (a) of this subsection;

- (c) A distance visual acuity of 20/60 or better using a bioptic telescopic device; and
 - (d) No ocular diagnosis or prognosis that indicates a likelihood that significant deterioration of visual acuity or visual field to levels below the minimum standards outlined in this subsection will occur.
- (2) Upon acceptance into a certified driver training program, an applicant shall be given an examination to test his or her knowledge of the motor vehicle laws of the Commonwealth. This examination may be taken orally. Upon successful completion of this examination, the applicant shall be issued a temporary instruction permit, that shall be valid only when the applicant is accompanied by an employee of a certified driver training program. Temporary instruction permits issued under this section shall be valid for one (1) year from the date of issue.
 - (3) An applicant who successfully completes a certified driver training program shall be reexamined by a vision specialist upon completion of the program. The examination shall certify that the applicant continues to meet the visual acuity and visual field standards set forth in subsection (1) of this section.
 - (4) An applicant who successfully completes a certified driving training program and passes the visual reexamination required by subsection (3) of this section shall be eligible to take a comprehensive operator's license examination administered by the *Department of Kentucky* State Police. The operator's license examination shall include testing of the applicant's driving skills over a route specifically designed to test the applicant's competency using a bioptic telescopic device.
 - (5) An applicant who is a restricted out-of-state driver establishing residence in Kentucky shall be required to take and pass a temporary instruction permit examination before being eligible to take the operator's license examination. An applicant who is a restricted out-of-state driver establishing residence in Kentucky shall not be required to complete a certified driver training program, but shall be required to take and pass the visual examination outlined in subsection (3) of this section before taking the operator's license examination.
 - (6) If an applicant or restricted out-of-state driver fails the operator's license examination three (3) times, he or she shall not be eligible to retake the examination until successfully completing additional training from a certified driver training program and obtaining an affidavit from the program director recommending that the applicant or restricted out-of-state driver be allowed to retake the examination.
 - (7) The Office for the Blind shall promulgate administrative regulations in accordance with KRS Chapter 13A to set standards for a certified driver training program and to otherwise carry out the provisions of this section.

Section 200. KRS 186.6401 is amended to read as follows:

The following persons shall be required to successfully complete the examinations required under KRS 186.480 prior to being issued a Kentucky operator's license:

- (1) A person who has been issued a Kentucky instruction permit or intermediate license;
- (2) A person who has applied for a Kentucky operator's license under KRS 186.412(4); and
- (3) Other persons as identified in an administrative regulation promulgated by the *Department of Kentucky* State Police under KRS Chapter 13A.

Section 201. KRS 186A.025 is amended to read as follows:

- (1)
 - (a) The Finance and Administration Cabinet shall have full responsibility and authority for day-to-day administration of the automated system described by this chapter; and
 - (b) May request the assistance of any cabinet or department of state government in carrying out its responsibilities under this chapter.
- (2) The Commonwealth Office of Technology shall assure, to the extent feasible, twenty-four (24) hour, year-round information support to the Department of *Kentucky* State Police, and to other law enforcement agencies state and nationwide, regarding vehicles registered and, when required, titled in this state.

Section 202. KRS 186A.055 is amended to read as follows:

The Department of Vehicle Regulation, in cooperation with the Department of *Kentucky* State Police, shall ensure that the automated vehicle registration and titling system provided for by this chapter will be designed, equipped, and operated so that, under normal conditions, the system will withhold production of a certificate of title until the vehicle

identification number of a vehicle for which a title is sought, and when present, its license number has been automatically compared against the Law Information Network Kentucky (LINK) and, unless it refuses to permit such an arrangement, the National Crime Information Center (NCIC) computerized listing of vehicles reported stolen, and a "no stolen report" or its equivalent is received.

Section 203. KRS 186A.060 is amended to read as follows:

The Department of Vehicle Regulation is directed to develop, in cooperation with county clerks, auto dealers, and the Department of Revenue, Office of Insurance, and Department of **Kentucky** State Police, the forms required to record all information pertinent to the initial registration, or titling and taxation, or transfer of registration or title of a vehicle. The Department of Vehicle Regulation shall make every effort to minimize and reduce the amount of paperwork required to apply for, or transfer, a vehicle title. When possible, the title document itself shall be used as the primary form used to effect a transfer of vehicle ownership. When no in-state title exists, then forms shall be designed by the department that require only the appropriate and essential information to effect the application for title. The department shall constantly review the information needs of government agencies and other organizations with the goal of reducing, or eliminating, unnecessary documentation. Information being sought for application for title relevant to, but not limited to, vehicle identification, owner, buyer, usage tax, county clerk or inspector shall be set forth by the cabinet in such a way as to promote flexibility in reaching this goal, except that an applicant for a motor vehicle title shall not be required to provide his or her social security number as part of the application process. The use of an electronic medium shall be employed so that forms can be printed by the automated system. Existing statutory language in this chapter and KRS Chapter 186 pertaining to application, signature, forms, or application transfer record may be construed to be electronic in nature at the discretion of the cabinet as provided for by administrative regulation. Any person who knowingly enters, or attests to the entry of, false or erroneous information in pursuit of a certificate of title shall be guilty of forgery in the second degree.

Section 204. KRS 186A.090 is amended to read as follows:

- (1) The owner of a vehicle required to be titled or registered in this state which:
 - (a) Does not have a legitimate vehicle identification number as affixed by a manufacturer regularly engaged in the original manufacture of the type vehicle for which registration is sought, or in accordance with the law of this or another state; or
 - (b) Has been built from parts;shall, before making application for registration of the vehicle, apply to the Department of Vehicle Regulation for issuance of a vehicle identification number plate, which shall be affixed to the vehicle in the manner prescribed by administrative regulations of the Department of Vehicle Regulation.
- (2) The Department of Vehicle Regulation shall establish, in cooperation with the Department of **Kentucky** State Police, regulations governing the form of application required by this section, and may require inspection of the vehicle before a vehicle identification number plate has been issued and after such plate has been affixed to the vehicle.

Section 205. KRS 186A.250 is amended to read as follows:

- (1) The Department of Vehicle Regulation shall suspend or revoke a certificate of title, after giving notice and providing a reasonable opportunity for the holder to be heard, when authorized by any other provision of law, or, if it finds:
 - (a) The certificate of title was fraudulently procured or erroneously issued; or
 - (b) The vehicle has been scrapped, dismantled or destroyed. Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.
- (2) When the Department of Vehicle Regulation suspends or revokes a certificate of title, the owner or person in possession of it shall, immediately upon receiving notice of the suspension or revocation, mail or deliver the certificate to the Department of Vehicle Regulation.
- (3) The department shall promptly notify the Department of **Kentucky** State Police of the suspension or revocation of any certificate of title.
- (4) Any peace officer shall seize and impound any certificate of title which has been suspended or revoked except when such document is in the custody of the Department of Vehicle Regulation or the Department of **Kentucky** State Police.

Section 206. KRS 186A.255 is amended to read as follows:

The Department of Vehicle Regulation shall promptly notify the Department of *Kentucky* State Police of the particulars of:

- (1) Any attempted or actual registration or titling in this state of a stolen motor vehicle, or trailer, or motor vehicle or trailer whose true identity is in doubt, of which it becomes aware;
- (2) Counterfeit, stolen or altered ownership documents it receives; and
- (3) Attempts to supply, or supplying to it, of false or fraudulent information in any application for a certificate of registration, certificate of title for a motor vehicle or trailer in this state.

Section 207. KRS 186A.305 is amended to read as follows:

- (1) No person shall intentionally remove, deface, cover, destroy, alter, or obscure any vehicle identification number, or other distinguishing number, of a motor vehicle or trailer or any part thereof in this state, without written authorization from the Department of *Kentucky* State Police, nor shall any person place or stamp, in place of the original manufacturer's serial, motor, or other number or mark upon a vehicle, any number except one assigned thereto by the Department of Vehicle Regulation under the provisions of KRS 186.1911 or authorized agency of another state.
- (2) This section does not prohibit the restoration by an owner of the original vehicle identification number when the restoration is authorized by the Department of *Kentucky* State Police, nor prevent any manufacturer from placing in the ordinary course of business numbers or marks upon new motor vehicles or new parts thereof.
- (3) This section shall not apply to a scrap processor who loads, unloads, crushes, flattens, destroys, grinds up, handles, shreds, or otherwise reduces a motor vehicle or motor vehicle part into metallic scrap for the purpose of recycling such metallic content.

Section 208. KRS 187.310 is amended to read as follows:

- (1) The cabinet shall, upon request, furnish any person a certified abstract of the operating record of any person subject to the provisions of KRS 187.290 to 187.620. The abstract shall designate the motor vehicles, if any, registered in the name of the person. If there is not a record of the person being convicted of violating any law relating to the operation of a motor vehicle, or of any injury or damage caused by the person, the department shall so certify on the abstract.
- (2) The certified abstract shall not include information concerning any violation of the law, injury, or damage that occurred earlier than three (3) years prior to the request. The abstracts shall not be admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident. The certified abstract shall not include accident reports filed with the Department of *Kentucky* State Police under KRS 189.635, and shall not include suspension orders of a student who has had his *or her* operator's license, permit, or privilege to operate a motor vehicle revoked or denied for being academically deficient pursuant to KRS 159.051 if the suspension has been lifted by the reinstatement of academic eligibility pursuant to KRS 159.051. The cabinet shall not furnish to any person the accident report of a driver other than himself *or herself*. This section shall in no way preclude the right of any court of law, law enforcement officer, or attorney representing the individual affected from securing full and complete information concerning the record of that individual.
- (3) Insurance companies issuing motor vehicle policies in the Commonwealth shall be prohibited from raising a policyholder's rates solely because the policyholder has a dependent whose license has been revoked or denied for being academically deficient pursuant to KRS 159.051.

Section 209. KRS 189.540 is amended to read as follows:

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

- (2) Any employee of any school district who violates any of the administrative regulations in any contract executed on behalf of a school district shall be subject to removal from office. Any person operating a school bus under contract with a school district who fails to comply with any of the administrative regulations shall be guilty of breach of contract and the contract shall be canceled after proper notice and a hearing by the responsible officers of such school district.
- (3) Any person who operates a school bus shall be required to possess a commercial driver's license issued pursuant to KRS 281A.170 with a school bus endorsement as described in KRS 281A.175.

Section 210. KRS 189.580 is amended to read as follows:

- (1)
 - (a) The operator of any vehicle, whose vehicle, vehicle load, or vehicle equipment which is involved in an accident resulting in injury to or death of any person or resulting only in damage to a vehicle or other property which is driven or attended by any person shall immediately stop and ascertain the extent of the injury or damage and render reasonable assistance, including the carrying, or making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary, or if such carrying is requested by the injured person. The operator or person having or assuming authority of the operator, or ownership of the vehicle, shall give the occupant of the vehicle, or person struck, if requested, the registration number of the vehicle, if any, and also the names and addresses of the owner, the occupants and operator. The total names need not exceed five (5) in number.
 - (b) If an accident that occurs on an interstate highway or parkway or any on-ramp or off-ramp thereto does not involve death, known or visible injury, or the transportation of hazardous material, the operator shall move the vehicle off the roadway to a place as close to the accident scene as practicable without obstructing traffic as soon as the vehicle can be moved without the risk of further injury or damage. The operator or person having or assuming authority of the operator, or ownership of the vehicle, shall give any other person involved in the accident, if requested, the registration number of the vehicle, if any, and also the names and addresses of the owner, the occupants, and the operator of his or her vehicle, and insurance information for the vehicle.
- (2) The operator of any vehicle which collides with or is involved in an accident with any vehicle or other property which is unattended resulting in any damage to such other vehicle or property shall immediately stop as close to the accident scene as possible without obstructing traffic and shall then and there either locate and notify the operator or owner of such vehicle or other property of his *or her* name, address, and the registration number of the vehicle he *or she* is driving or shall attach securely in a conspicuous place in or on such vehicle or other property a written notice giving his *or her* name, address, and the registration number of the vehicle he *or she* is driving, or shall file a report with the local police department.
- (3) If the operator of a vehicle is unable to move a vehicle off the roadway under the provisions of subsections (1) and (2) of this section, the operator or owner may permit any person who possesses a valid operator's license or proper class of commercial driver's license to move the vehicle as provided in this section.
- (4) Except as provided for in subsection (5) of this section, a peace officer or safety officer may remove or cause to be removed from the roadway of an interstate highway or parkway or any on-ramp or off-ramp thereto, without consent of the owner or operator, any vehicle, cargo, or other property which is obstructing the roadway, creating or aggravating an emergency situation, or otherwise endangering public safety. Any vehicle, cargo, or other property obstructing the roadway of an interstate highway or parkway shall be removed by the most expeditious means available to clear the obstruction, giving due regard to the protection of the property removed.
- (5)
 - (a) In accidents that involve fatalities or known or visible injuries, the removal provisions of subsection (4) of this section shall apply only after all medical assistance, fire supervision, and site investigation have been completed.
 - (b) The removal provisions of subsection (4) of this section shall not apply if an accident involves, or is believed to involve, a release of hazardous materials.
- (6)
 - (a) The operator of a vehicle involved in an accident on a highway in this state which results in a fatality or a known or visible injury to a person or damage to a vehicle which renders the vehicle inoperable shall immediately notify a public safety answering point, law enforcement agency, or law enforcement officer having jurisdiction, if the operator is physically capable of doing so and has in his or her possession a functioning communications device with which to do so.

- (b) In the event an operator fails to notify or is incapable of notifying a public safety answering point, law enforcement agency, or law enforcement officer having jurisdiction, the responsibility for reporting the accident within a reasonable amount of time shall rest with the owner of the vehicle or any occupant of the vehicle at the time of the accident, if the owner or occupant is physically capable of doing so, has in his or her possession a functioning communications device with which to do so, and, in the case of the owner, knows of the motor vehicle accident. A law enforcement officer having jurisdiction shall investigate the accident and file a written report of the accident with the officer's agency.
- (7) The operator of a vehicle involved in an accident on a highway in this state resulting in injury to or death of any person or in which total property damage of five hundred dollars (\$500) or more is sustained, and in which an investigation is not conducted by a law enforcement officer, shall file a written report of the accident with the Department of **Kentucky** State Police within ten (10) days of the occurrence of the accident upon forms provided by the department.
- (8) Any agency, including the Commonwealth, that removes property from the roadway may intervene in any civil action arising from the accident to recover any costs expended. An owner of real property shall not be liable for the costs of removal under this section of trees, fences, structures, or other debris which fall into the roadway as a result of fire, severe weather, or other casualty.

Section 211. KRS 189.635 is amended to read as follows:

- (1) The Justice **and Public Safety** Cabinet, Department of **Kentucky** State Police, shall be responsible for maintaining a reporting system for all vehicle accidents which occur within the Commonwealth. Such accident reports shall be utilized for such purposes as will improve the traffic safety program in the Commonwealth involving the collection, processing, storing, and dissemination of such data and the establishment of procedures by administrative regulations to insure that uniform definitions, classifications, and other federal requirements are in compliance.
- (2) Any person operating a vehicle on the highways of this state who is involved in an accident resulting in fatal or nonfatal personal injury to any person or damage to the vehicle rendering the vehicle inoperable shall be required to immediately notify a law enforcement officer having jurisdiction. In the event the operator fails to notify or is incapable of notifying a law enforcement officer having jurisdiction, such responsibility shall rest with the owner of the vehicle or any occupant of the vehicle at the time of the accident. A law enforcement officer having jurisdiction shall investigate the accident and file a written report of the accident with his law enforcement agency.
- (3) Every law enforcement agency whose officers investigate a vehicle accident of which a report must be made as required in this chapter shall file a report of the accident with the Department of **Kentucky** State Police within ten (10) days after investigation of the accident upon forms supplied by the department.
- (4) Any person operating a vehicle on the highways of this state who is involved in an accident resulting in any property damage exceeding five hundred dollars (\$500) in which an investigation is not conducted by a law enforcement officer shall file a written report of the accident with the Department of **Kentucky** State Police within ten (10) days of occurrence of the accident upon forms provided by the department.
- (5) All accident reports filed with the Department of **Kentucky** State Police in compliance with subsection (4) above shall remain confidential except that the department may disclose the identity of a person involved in an accident when his **or her** identity is not otherwise known or when he **or she** denies his **or her** presence at an accident. Except as provided in subsection (7) of this section, all other accident reports required by this section, and the information contained in the reports, shall be confidential and exempt from public disclosure except when produced pursuant to a properly executed subpoena or court order, or except pursuant to subsection (6) of this section. These reports shall be made available only to the parties to the accident, the parents or guardians of a minor who is party to the accident, and the insurers of any party who is the subject of the report, or to the attorneys of the parties.
- (6) The report shall be made available to a news-gathering organization, solely for the purpose of publishing or broadcasting the news. The news-gathering organization shall not use or distribute the report, or knowingly allow its use or distribution, for a commercial purpose other than the news-gathering organization's publication or broadcasting of the information in the report. A newspaper, periodical, or radio or television station shall not be held to have used or knowingly allowed the use of the report for a commercial purpose merely because of its publication or broadcast.

- (7) The motor vehicle insurers of any train engineer or other train crew member involved in an accident on a railroad while functioning in their professional capacity shall be prohibited from obtaining a copy of any accident report filed on the accident under this section without written consent from the individual the company insures. Insurance companies issuing motor vehicle policies in the Commonwealth shall be prohibited from raising a policyholder's rates solely because the policyholder, in his or her professional capacity, is a train engineer or other train crew member involved in an accident on a railroad.

Section 212. KRS 189.753 is amended to read as follows:

- (1) Any motor vehicle left upon the right-of-way of a state highway for three (3) consecutive days shall be presumed an abandoned vehicle.
- (2) The Department of **Kentucky** State Police shall locate abandoned vehicles on the right-of-way of state highways. Upon determination that a vehicle is abandoned, and notwithstanding the provisions of KRS 189.450, the Department of **Kentucky** State Police may order any person engaged in the business of storing or towing motor vehicles to remove the abandoned vehicle to a site chosen by the person. The department shall determine, if possible, the ownership of the vehicle through the abandoned vehicle's license plates, serial number, or other methods of determining ownership. As soon as practicable the owner shall be notified by mail, whether he *or she* is a Kentucky resident or a resident of another state, that the abandoned vehicle was illegally upon public property; the name and the address where the storage facility is located; that removal of the vehicle from the storage facility will involve payment of towing and storage charges; and that the vehicle may be sold pursuant to provisions of KRS 376.275 if not claimed within sixty (60) days. A notification shall not be required if ownership cannot be determined. In the event of such sale, the state shall receive any proceeds after the satisfaction of all liens placed on the vehicle.
- (3) The commissioner of **the Department of Kentucky** State Police shall promulgate administrative regulations pursuant to KRS Chapter 13A to carry out the provisions of this section.

Section 213. KRS 189A.050 is amended to read as follows:

- (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), or (d) shall be sentenced to pay a service fee of three hundred twenty-five dollars (\$325), which shall be in addition to all other penalties authorized by law.
- (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.
- (3) The revenue collected from the service fee imposed by this section shall be utilized as follows:
- (a) Twelve percent (12%) of the amount collected shall be transferred to the **Department of** Kentucky State Police forensic laboratory for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;
- (b) Twenty percent (20%) of the service fee collected pursuant to this section shall be allocated to the Department of Public Advocacy;
- (c) One percent (1%) shall be transferred to the Prosecutor's Advisory Council for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;
- (d) Sixteen percent (16%) of the amount collected shall be transferred as follows:
1. Fifty percent (50%) shall be credited to the traumatic brain injury trust fund established under KRS 211.476; and
2. Fifty percent (50%) shall be credited to the Cabinet for Health and Family Services, Department for Mental Health and Mental Retardation Services, for the purposes of providing direct services to individuals with brain injuries that may include long-term supportive services and training and consultation to professionals working with individuals with brain injuries. As funding becomes available under this subparagraph, the cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the services permitted by this subparagraph.
- (e) Any amount specified by a specific statute shall be transferred as provided in that statute;

- (f) Forty-six percent (46%) of the amount collected shall be transferred to be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment, and educational programs authorized by this chapter and by the Department of Public Advocacy; and
 - (g) The remainder of the amount collected shall be transferred to the general fund.
- (4) The amounts specified in subsection (3)(a), (b), (c), and (d) of this section shall be placed in trust and agency accounts that shall not lapse.

Section 214. KRS 189A.103 is amended to read as follows:

The following provisions shall apply to any person who operates or is in physical control of a motor vehicle or a vehicle that is not a motor vehicle in this Commonwealth:

- (1) He *or she* has given his *or her* consent to one (1) or more tests of his *or her* blood, breath, and urine, or combination thereof, for the purpose of determining alcohol concentration or presence of a substance which may impair one's driving ability, if an officer has reasonable grounds to believe that a violation of KRS 189A.010(1) or 189.520(1) has occurred.
- (2) Any person who is dead, unconscious, or otherwise in a condition rendering him *or her* incapable of refusal is deemed not to have withdrawn the consent provided in subsection (1) of this section, and the test may be given.
- (3) The breath, blood, and urine tests administered pursuant to this section shall be administered at the direction of a peace officer having reasonable grounds to believe the person has committed a violation of KRS 189A.010(1) or 189.520(1).
 - (a) Tests of the person's breath, blood, or urine, to be valid pursuant to this section, shall have been performed according to the administrative regulations promulgated by the secretary of the Justice *and Public Safety* Cabinet, and shall have been performed, as to breath tests, only after a peace officer has had the person under personal observation at the location of the test for a minimum of twenty (20) minutes.
 - (b) All breath tests shall be administered by a peace officer holding a certificate as an operator of a breath analysis instrument, issued by the secretary of the Justice *and Public Safety* Cabinet or his *or her* designee.
- (4) A breath test shall consist of a test which is performed in accordance with the manufacturer's instructions for the use of the instrument. The secretary of the Justice *and Public Safety* Cabinet shall keep available for public inspection copies of these manufacturer's instructions for all models of breath testing devices in use by the Commonwealth of Kentucky.
- (5) When the preliminary breath test, breath test, or other evidence gives the peace officer reasonable grounds to believe there is impairment by a substance which is not subject to testing by a breath test, then blood or urine tests, or both, may be required in addition to a breath test, or in lieu of a breath test.
- (6) Only a physician, registered nurse, phlebotomist, medical technician, or medical technologist not otherwise prohibited by law can withdraw any blood of any person submitting to a test under this section.
- (7) After the person has submitted to all alcohol concentration tests and substance tests requested by the officer, the person tested shall be permitted to have a person listed in subsection (6) of this section of his *or her* own choosing administer a test or tests in addition to any tests administered at the direction of the peace officer. Tests conducted under this section shall be conducted within a reasonable length of time. Provided, however, the nonavailability of the person chosen to administer a test or tests in addition to those administered at the direction of the peace officer within a reasonable time shall not be grounds for rendering inadmissible as evidence the results of the test or tests administered at the direction of the peace officer.

Section 215. KRS 189A.120 is amended to read as follows:

- (1) When an alcohol concentration for a person twenty-one (21) years of age or older in a prosecution for violation of KRS 189A.010 is 0.08 or above, is 0.02 or above for a person under the age of twenty-one (21), or when the defendant, regardless of age, has refused to take an alcohol concentration or substance test, a prosecuting attorney shall not agree to the amendment of the charge to a lesser offense and shall oppose the amendment of the charge at trial, unless all prosecution witnesses are, and it is expected they will continue to be, unavailable for trial.

- (2) A prosecuting attorney shall not amend a blood alcohol concentration, and he *or she* shall oppose the amendment of the percentage, unless uncontroverted scientific evidence is presented that the test results were in error. In those cases, the prosecutor shall state his *or her* reasons for agreeing with the amendment, and the scientific data upon which the amendment was made shall be made a part of the record in this case.
- (3) The record of charges and disposition thereof, including reasons for amending the charges, shall be transmitted by the court to the Justice *and Public Safety* Cabinet for inclusion in the centralized criminal history record information system under KRS 17.150.

Section 216. KRS 189A.300 is amended to read as follows:

The Commonwealth shall provide at least one (1) breath alcohol analysis and simulating unit for each county, paid for by state funds received pursuant to the service fee levied in KRS 189A.050. All units shall be approved by the secretary of the Justice *and Public Safety* Cabinet or his *or her* designee.

Section 217. KRS 194A.065 is amended to read as follows:

- (1) The Cabinet for Health and Family Services, the Department of Juvenile Justice, the Department of Corrections, the Administrative Office of the Courts, and the *Department of* Kentucky State Police shall be responsible for the recording of those data elements that are needed for the development of the centralized criminal history record information system.
- (2) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440.
- (3) The Cabinet for Health and Family Services shall provide access to the *Department of* Kentucky State Police, the Department of Corrections, the Department of Juvenile Justice, and the Administrative Office of the Courts to its database.

Section 218. KRS 194A.092 is amended to read as follows:

The Division of Child Abuse and Domestic Violence Services is hereby created and established within the Cabinet for Health and Family Services. The office shall be headed by a director, who shall be appointed by the secretary.

- (1) The division's duties, rights, and responsibilities shall include, but not be limited to, the following:
 - (a) Provide coordinative functions so that no services funded or provided by state government agencies are duplicative so as to ensure the greatest efficiency in the use of resources and funding, and to ensure that a consistent philosophy underlies all efforts undertaken by the administration in initiatives related to child abuse, domestic violence, and rape or sexual assault.
 - (b) Coordinate the legislative efforts of the administration related to child abuse, domestic violence and rape or sexual assault which shall include drafting legislative proposals and providing input to the secretary on the impact of legislation proposed by other agencies and government branches.
 - (c) Provide training and consultation to programs provided or funded by the state which provide services to victims of child abuse, domestic violence, rape or sexual assault, and other crimes.
 - (d) In conjunction with staff from the Justice *and Public Safety* Cabinet and other staff within the Cabinet for Health and Family Services, and with input from direct service providers throughout Kentucky, develop standards of care for victim and offender services provided or funded by the state.
 - (e) Design and implement research programs which attend to the quality of victim-related services.
 - (f) Provide consultation on the development of budgets for the rape crisis, child abuse, and domestic violence programs funded by the state.
 - (g) Provide recommendations to the Governor and to the Secretaries of the Justice *and Public Safety* Cabinet and the Cabinet for Health and Family Services, related to the improvement and expansion of victim services provided or funded by these agencies.
 - (h) Undertake new and progressive initiatives to improve and enhance the delivery of services to victims of child abuse, domestic violence, and rape or sexual assault.
- (2) The director may, at the request of the Governor or any secretary, serve as a designee on boards, commissions, task forces or other committees addressing child abuse, domestic violence and rape or sexual assault.

Section 219. KRS 194A.150 is amended to read as follows:

When federal programs require a particular citizens' council within or attached to the cabinet to include state officials as voting members, the secretary shall, for the specific purposes of those federal programs, be authorized to vote in those council meetings and shall further be authorized to call upon either the secretary of the Cabinet for Health and Family Services, the secretary of the Finance and Administration Cabinet, the chief state school officer, the secretary of the Justice *and Public Safety* Cabinet, the secretary of the Environmental and Public Protection Cabinet, the secretary of the Cabinet for Economic Development, the executive director of the Council on Higher Education, or any combination of the above as may be appropriate, to be voting members of expanded citizens' councils for the purposes of these federal programs. The secretary shall exercise this prerogative only when the federal programs specifically require that state officials be voting members of the citizens' councils.

Section 220. KRS 194A.735 is amended to read as follows:

- (1) Subject to sufficient funding, the Cabinet for Health and Family Services and the Justice *and Public Safety* Cabinet, in consultation with any other state agency as appropriate, shall develop and implement a homelessness prevention pilot project that offers institutional discharge planning on a voluntary basis to persons exiting from state-operated or supervised institutions involving mental health and foster care programs, and persons serving out their sentences in any state-operated prison in Oldham County.
- (2) The primary goal of the project shall be to prepare a limited number of persons in a foster home under supervision by the Cabinet for Health and Family Services, state-operated prison in Oldham County under supervision by the Justice *and Public Safety* Cabinet, and mental health facility under supervision by the Cabinet for Health and Family Services for return or reentry into the community, and to offer information about any necessary linkage of the person to needed community services and supports.
 - (a) The pilot project shall be jointly supported by each of the cabinets. One (1) office for the pilot project shall be located in a family resource center or Department for Community Based Services building in Jefferson County, due to its urban population, and one (1) office shall be located in Clinton, Cumberland, McCreary, or Wayne County, due to its rural population. The pilot project office in Jefferson County shall serve persons intending to locate in Jefferson County who are being released from a mental health facility under supervision by the Cabinet for Health and Family Services and persons intending to locate in Jefferson County who are being released after serving out their sentences from any state-operated prison in Oldham County. The pilot project office in Clinton, Cumberland, McCreary, or Wayne County shall serve persons intending to locate in Clinton, Cumberland, McCreary, or Wayne County who are aging out of the foster care program following placement in Clinton, Cumberland, McCreary, or Wayne County.
 - (b) Within thirty (30) days following July 13, 2004, the cabinets shall supply each pilot project director with the collection of information on available employment, social, housing, educational, medical, mental health, and other community services in the county. The information shall include but not be limited to the service area of each public and private provider of services, the capacity of each provider to render services to persons served by the pilot project, the fees of each provider, contact names and telephone numbers for each provider, and an emergency contact for each provider.
 - (c) Within thirty (30) days following July 13, 2004, the cabinets and directors shall begin a program of education for each of the cabinet and foster home and mental health and appropriate state-operated prison facility staff who will participate in the development of a discharge plan for volunteer participants under this section.
- (3) The pilot project shall operate on a voluntary basis. One (1) of each five (5) persons eligible for discharge or completing their sentence shall be offered the opportunity to participate in the pilot program. This offer shall be made at least six (6) months prior to discharge. There shall be a cap on the number of persons served in each office, to be determined by available funding and staffing requirements.
 - (a) The staff member designated as the homelessness prevention coordinator for each foster home or mental health facility shall maintain a file for each volunteer participant in the foster home or mental health facility, relating to the participant's employment, social, housing, educational, medical, and mental health needs. This file shall be updated from time to time as appropriate and pursuant to an administrative regulation promulgated by the cabinet in accordance with KRS Chapter 13A that establishes standards for the discharge summary. The staff member designated as the homelessness prevention coordinator for the appropriate state-operated prison participating in the pilot project shall maintain a file containing appropriate forms completed and updated by each person voluntarily

participating in the pilot project, relating to the information provided under subsection (6) of this section. All applicable privacy and confidentiality laws shall be followed in assembling and maintaining this file.

- (b) Six (6) months prior to the expected date of discharge, the discharge coordinator for each foster home and mental health and state-operated prison facility shall contact the homelessness prevention director for Jefferson County or the homelessness prevention director for Clinton, Cumberland, McCreary, or Wayne County, as appropriate, about the pending release of the volunteer participant who is eligible for discharge from a foster home or mental health facility or who will have served out his or her sentence in a state-operated prison facility that is participating in the pilot project. The director shall visit the home or facility, as appropriate, to assist with the preparation of the final comprehensive discharge plan.
- (c) The director and the discharge coordinator for each participating foster home and mental health and state-operated prison facility shall work together to develop a final comprehensive discharge plan that addresses the employment, health care, educational, housing, and other needs of the person to be released, subject to the consent of the person and the funding and staffing capabilities of the director. Information provided by the coordinator may include and be limited to, subject to the staffing and funding capabilities of the coordinator, information provided by the person to be released on a form or forms made available by the foster home or mental health or state-operated prison facility. The discharge plan shall contain but not be limited to the following:
 - 1. Estimated discharge date from the foster home, state-operated prison facility, or mental health facility;
 - 2. Educational background of the person to be released, including any classes completed or skills obtained by the person while in the foster home, state-operated prison facility, or mental health facility;
 - 3. The person's medical and mental health needs;
 - 4. Other relevant social or family background information;
 - 5. A listing of previous attempts to arrange for post-release residence, employment, medical and mental health services, housing, education, and other community-based services for the person; and
 - 6. Other available funding and public programs that may reimburse any services obtained from a provider listed in the discharge plan. Every effort shall be made in the discharge plan to refer the person to a provider that has agreed to an arranged public or private funding arrangement.

No discharge plan shall be completed unless the written consent, consistent with state and federal privacy laws, to compile the information and prepare the plan has been given by the person eligible for release who has volunteered to participate in the pilot program.

- (4) The director shall assist with the completion of a final comprehensive discharge plan that may include, but need not be limited to, the following:
 - (a) Availability of appropriate housing, including but not limited to a twenty-four (24) month transitional program, supportive housing, or halfway house. Planning discharge to an emergency shelter is not appropriate to meet the housing needs of the person being discharged from foster care, a state-operated prison facility, or a mental health facility;
 - (b) Access to appropriate treatment services for participants who require follow-up treatment;
 - (c) Availability of appropriate employment opportunities, including assessment of vocational skills and job training; and
 - (d) Identification of appropriate opportunities to further education.
- (5) Discharge planning shall be individualized, comprehensive, and coordinated with community-based services.
 - (a) Each discharge plan shall create a continuous, coordinated, and seamless system that is designed to meet the needs of the person.
 - (b) Staff of the foster home or facility and staff of community-based services providers shall be involved in the planning.

- (c) Each facility shall utilize, wherever possible, community-based services within the facility to establish familiarity of the person residing in the facility with the community services.
- (6) The Department of Corrections shall, through an administrative regulation promulgated in accordance with KRS Chapter 13A, develop a discharge plan that addresses the education; employment, technical, and vocational skills; and housing, medical, and mental health needs of a person who is to be released after serving out his or her sentence in a state-operated prison facility participating in the pilot project.
- (7) Appropriate data about discharge placements and follow-up measures shall be collected and analyzed. The analysis shall be included in the interim and final reports of the pilot program specified in subsection (8) of this section.
- (8) Each homelessness prevention director shall have regular meetings with appropriate state cabinet and agency staff to review the pilot project and make recommendations for the benefit of the program. Each director shall be assisted by a local advisory council composed of local providers of services and consumer advocates who are familiar with homelessness prevention issues. Priority for membership on the advisory council shall be given to existing resources and regional mental health and substance abuse advisory councils at the discretion of the director.
- (9) Each cabinet shall collect data about the discharge plans, referrals, costs of services, and rate of recidivism related to the homelessness prevention program, and shall submit an annual report to the Governor and the Legislative Research Commission no later than October 1 that summarizes the data and contains recommendations for the improvement of the program. The annual report also shall be forwarded to the Kentucky Commission on Services and Supports for Individuals with Mental Retardation and Other Developmental Disabilities, Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses, and the Kentucky Housing Corporation Homelessness Policy Council.

Section 221. KRS 196.010 is amended to read as follows:

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

- (1) "Cabinet" means the Justice *and Public Safety* Cabinet;
- (2) "Commissioner" means commissioner of the Department of Corrections;
- (3) "Department" means the Department of Corrections;
- (4) "Institution" means any institution under the control of the Department of Corrections; and
- (5) "Secretary" means secretary of the Justice *and Public Safety* Cabinet.

Section 222. KRS 196.026 is amended to read as follows:

The Department of Corrections shall consist of the following organizational units:

- (1) *Personnel Division;*
- (2) *Office of Adult Institutions, which shall have the following divisions:*
 - (a) *Division of Operations and Program Services;*
 - (b) *Division of Medical Services;*
 - (c) *Division of Mental Health Services;*
 - (d) *Division of Correctional Industries;*
 - (e) *Division of Kentucky State Reformatory;*
 - (f) *Division of Luther Luckett Correctional Complex;*
 - (g) *Division of Roederer Correctional Complex;*
 - (h) *Division of Blackburn Correctional Complex;*
 - (i) *Division of Kentucky Correctional Institution for Women;*
 - (j) *Division of Frankfort Career Development Center;*

- (k) *Division of Northpoint Training Center Division;*
- (l) *Division of Eastern Kentucky Correctional Complex;*
- (m) *Division of Bell County Forestry Camp;*
- (n) *Division of Kentucky State Penitentiary;*
- (o) *Division of Western Kentucky Correctional Complex;*
- (p) *Division of Green River Correctional Complex; and*
- (q) *Division of Little Sandy Correctional Complex.*

Each division specified in paragraphs (e) to (q) of this subsection shall be headed by a warden pursuant to KRS 196.160;

- (3) *Office of Community Services and Facilities, which shall have the following divisions:*

- (a) *Division of Probation and Parole; and*
- (b) *Division of Local Facilities; and*

- (4) *Office of Support Services, which shall have the following divisions:*

- (a) *Division of Administrative Services;*
- (b) *Division of Corrections Training; and*
- (c) *Division of Population Management*~~{Office of General Counsel;~~

- ~~(2) Division of Administrative Services;~~
- ~~(3) Division of Corrections Training;~~
- ~~(4) Division of Institutional Operations;~~
- ~~(5) Division of Mental Health Programs;~~
- ~~(6) Division of Correctional Industries;~~
- ~~(7) Division of Medical Services;~~
- ~~(8) Division of Probation and Parole;~~
- ~~(9) Division of Community Services and Local Facilities;~~
- ~~(10) Division of Personnel Services; and~~
- ~~(11) Western Region Division and Eastern Region Division, Adult Institutions.~~

~~Each state penal correctional institution referenced in KRS 197.010 shall be considered a division for organizational purposes. Each institution shall be headed by a warden pursuant to KRS 196.160.~~

Section 223. KRS 196.035 is amended to read as follows:

The secretary shall, except as otherwise provided in KRS 439.250 to 439.560 and KRS Chapter 13A, have the power and authority to ***promulgate***~~{adopt, amend, or rescind}~~ administrative regulations he ***or she*** deems necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet, including qualification for the receipt of federal funds and for cooperation with other state and federal agencies. The secretary may delegate to any person appointed the power and authority as he ***or she*** deems reasonable and proper for the effective administration of the cabinet.

Section 224. KRS 196.037 is amended to read as follows:

- (1) All personnel of the department, while acting for the department in any capacity entailing the maintenance of custody over any prisoners, shall have all the authority and powers of peace officers.
- (2) All department personnel who are officially requested by a law enforcement agency in a county of Kentucky or by the ***Department of*** Kentucky State Police to assist in the apprehension of a prisoner who has escaped from the legal or physical custody of the Department of Corrections or a detention facility of the Department of Corrections shall possess, while responding to and for the duration of the matter for which the request was made, the same powers of arrest as peace officers.

- (3) Probation and parole officers, while acting for the department in any capacity entailing the maintenance of custody or supervision of any confined prisoner, paroled prisoner, escaped prisoner, probationer, or other person otherwise placed under their supervision shall have all the authority and powers of peace officers.

Section 225. KRS 196.075 is amended to read as follows:

The department~~[of Corrections]~~, under the direction of the commissioner, shall exercise the functions vested in the department relating to probation and parole. The commissioner shall ***promulgate***~~[make]~~ administrative regulations governing parolees and shall have the same powers of arrest as probation and parole officers.

Section 226. KRS 196.093 is amended to read as follows:

The Department of Corrections shall, in cooperation with the ***Department of*** Kentucky State Police, the Department of Juvenile Justice, the Cabinet for Health and Family Services, and the Administrative Office of the Courts, be responsible for the recording of those data elements that are needed for the development of the centralized criminal history record information system:

- (1) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440;
- (2) The Department of Corrections shall provide access to the ***Department of*** Kentucky State Police, the Department of Juvenile Justice, the Cabinet for Health and Family Services, and the Administrative Office of the Courts to its database; and
- (3) The Department of Corrections shall assign the same identification number or other variable to each person whose name appears in the database.

Section 227. KRS 196.701 is amended to read as follows:

- (1) To develop and implement a statewide strategic plan for ***the state and community corrections programs, the Kentucky State Corrections Commission is created and is attached to the office of the secretary of the Justice and Public Safety Cabinet. The commission shall consist of twenty-three (23) members as follows:***
 - (a) ***The secretary of the Justice and Public Safety Cabinet or his or her designee in writing;***
 - (b) ***The commissioner of the Department of Corrections or his or her designee in writing;***
 - (c) ***The deputy commissioner of the Office of Community Services and Facilities;***
 - (d) ***The deputy commissioner of the Office of Adult Institutions;***
 - (e) ***The executive director of the Parole Board or his or her designee in writing;***
 - (f) ***The executive director of the Office of Legislative and Intergovernmental Services of the Justice and Public Safety Cabinet or his or her designee in writing;***
 - (g) ***Two (2) Circuit Court Judges appointed by the Chief Justice;***
 - (h) ***A county judge/executive appointed by the Governor;***
 - (i) ***A county jailer appointed by the Governor;***
 - (j) ***A Commonwealth's attorney appointed by the Governor;***
 - (k) ***A practicing attorney appointed by the Governor;***
 - (l) ***A victim, as that term is defined in KRS 346.020, appointed by the Governor;***
 - (m) ***Four (4) service providers from the field of mental health, substance abuse treatment, or vocational and educational training, appointed by the Governor;***
 - (n) ***A public member who is qualified to express the views of organized labor, appointed by the Governor;***
 - (o) ***A public member who is qualified to express the views of business and industry, appointed by the Governor;***
 - (p) ***The public advocate or his or her designee in writing; and***

- (g) ~~Three (3) at-large members appointed by the Governor~~~~[community corrections programs, the Kentucky State Corrections Commission is created and is attached to the office of the secretary of the Justice Cabinet. The commission shall consist of eleven (11) members as follows:~~
- (a) ~~The deputy commissioner of the Division of Community Services and Local Facilities;~~
 - (b) ~~A Circuit Court judge appointed by the Chief Justice;~~
 - (c) ~~A county judge/executive appointed by the Governor;~~
 - (d) ~~A county jailer appointed by the Governor;~~
 - (e) ~~A Commonwealth's attorney appointed by the Governor;~~
 - (f) ~~A victim, as that term is defined in KRS 346.020, appointed by the Governor;~~
 - (g) ~~Two (2) service providers from the field of mental health, substance abuse treatment, or vocational and educational training appointed by the Governor;~~
 - (h) ~~The executive director of the Office of the Criminal Justice Council or the executive director's designee;~~
 - (i) ~~The executive director of the Parole Board; and~~
 - (j) ~~The public advocate or his or her designee].~~
- (2) The terms of those members appointed by the appointing authority shall be three (3) years. These members shall serve at the pleasure of the appointing authority and shall be eligible for reappointment. ***The appointed members may be removed for cause. All others serve during their terms of office.*** If there is a vacancy, the appointing authority shall immediately make an appointment effective for the unexpired term.
- (3) The chairperson of the commission shall be the ***secretary of justice and public safety***~~[deputy commissioner of the Division of Community Services and Local Facilities]~~. The ***commissioner of the Department of Corrections shall serve as the***~~[commission shall elect from among its members a]~~ vice chairperson who shall preside and exercise the functions of the chairperson during absence or disability of the chairperson.
- (4) Regular meetings of the commission shall be held at least once every four (4) months at a place, day, and hour determined by the commission. Special meetings shall be held when needed as determined by the chairperson. If five (5) or more members of the commission request in writing that the chairperson call a special meeting, then the chairperson shall call a special meeting.
- (5) Members of the commission shall receive reimbursement for necessary expenses for attendance at official commission meetings or public hearings. The administrative functions of the commission shall be performed by a full-time employee of the department who is selected by the commissioner. ***All public members of the commission shall, in addition to expenses, receive twenty-five dollars (\$25) per day for attending each meeting.***

Section 228. KRS 196.702 is amended to read as follows:

The commission shall:

- (1) Develop a statewide strategic plan for the development and implementation of goals and objectives, target populations, and program criteria for community corrections programs;
- (2) Conduct, in collaboration with community corrections boards, a statewide assessment of community corrections programs;
- (3) Award all grant moneys to community corrections programs;
- (4) Review community correction program plans and their implementation to ensure compliance with the statewide strategic plan, including the following goals:
 - (a) Effectiveness of community corrections programs in maintaining public safety;
 - (b) Reduction of local commitments to the department;
 - (c) Reduction in the rate of recidivism; and
 - (d) Reduction in revocations of probation and parole;
- (5) Provide technical assistance, support, and training to local boards;

- (6) Submit an annual report no later than September 1 of each year to the commissioner, the Governor, and the General Assembly which includes at least the following information:
 - (a) The status of the implementation of the statewide strategic plan;
 - (b) The effectiveness of community corrections programs in achieving the goals outlined in subsection (4) of this section; and
 - (c) An accounting of the distribution of grants and other funds; ~~and~~
- (7) Administer the provisions of KRS 196.700 to 196.735;
- (8) *Advise the Governor and the commissioner concerning correctional policy and programs, including particularly the following:*
 - (a) *The need for, and the development of, new or specialized institutions, facilities, or programs;*
 - (b) *The need for, and the effectuation of, collaboration and liaison within the department, and between the department and community agencies and resources, including the bench and bar, in order to promote the readjustment and rehabilitation of offenders in institutions or under parole or probation supervision in the community; and*
 - (c) *The need for, and the development of, useful research in penology, correctional treatment, criminal law, or in the disciplines relevant thereto;*
- (9) *Establish a Parole Board Nominating Committee which shall:*
 - (a) *Include five (5) ex officio members of the commission:*
 - 1. *The secretary of the Justice and Public Safety Cabinet, who shall serve as chairperson of the committee;*
 - 2. *The commissioner of the Department of Corrections, who shall serve as the vice chairperson of the committee;*
 - 3. *The executive director of the Parole Board;*
 - 4. *The deputy commissioner of the Office of Adult Institutions; and*
 - 5. *The deputy commissioner of the Office of Community Services and Facilities;*
 - (b) *Include ten (10) other members of the commission:*
 - 1. *Two (2) Circuit Judges;*
 - 2. *Two (2) service providers with backgrounds in mental health or education;*
 - 3. *A person representing the views of business and industry;*
 - 4. *A person representing the views of organized labor;*
 - 5. *A practicing attorney; and*
 - 6. *Three (3) at-large members;*
 - (c) *Publicize vacancies and impending term expirations on the Parole Board in accordance with standards set forth in KRS 424.180;*
 - (d) *Submit the names of three (3) candidates to the commission for every vacancy or expired term on the Parole Board;*
 - (e) *Forward a statement of qualifications of each nominee to the commission along with the nomination. This statement shall identify the experience which meets the qualifications for Parole Board membership outlined in KRS 439.320(1); and*
 - (f) *Maintain the statement of qualifications as a public record in accordance with KRS 61.870 to 61.884.*

SECTION 229. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

The commission or one (1) or more of its members may visit and inspect any state penal institution, and may inform and advise the commissioner of the Department of Corrections in regard to the institution's physical or

other condition, its discipline, management, program, and its general adequacy or inadequacy. The commission or a majority of its members shall have full access to the grounds and buildings and to the books and records belonging or relating to the institution, as well as the right to subpoena witnesses, take proof, or hear testimony under oath relating to the institution.

Section 230. KRS 197.010 is amended to read as follows:

Definitions as used in this chapter, unless the context otherwise requires:

- (1) "Cabinet" means the Justice *and Public Safety* Cabinet;
- (2) "Classification" means the systematic assignment of a prisoner to a custody level, program, and penitentiary;
- (3) "Department" means Department of Corrections;
- (4) "Eligible sexual offender" means a sexual offender for whom the sentencing court, department officials, or both have determined that he or she:
 - (a) Has demonstrated evidence of a mental, emotional, or behavioral disorder, but not active psychosis or mental retardation; and
 - (b) Is likely to benefit from the program;
- (5) "Penitentiaries" includes the state penal institutions for males at Eddyville, LaGrange, the Green River Correctional Complex, the Luther Lockett Correctional Complex, the Kentucky Correctional Institute for Women, the Northpoint Training Center, the Roederer Correctional Complex, the Eastern Kentucky Correctional Complex, the Western Kentucky Correctional Complex, Frankfort Career Development Center, Blackburn Correctional Complex, and Bell County Forestry Camp, together with the branches thereof, any private prison as provided by KRS 197.500, and any other similar institutions hereafter established;
- (6) "Sexual offender" means any person convicted of, pleading guilty to, or entering an Alford plea to a sex crime as defined in KRS 17.500; and
- (7) "State agency" means any department, board, commission, or agency of the state government.

Section 231. KRS 197.020 is amended to read as follows:

- (1) The Department of Corrections shall:
 - (a) **Promulgate administrative regulations**~~[Formulate and prescribe all necessary regulations and bylaws]~~ for the government and discipline of the penitentiary, ~~[the rules]~~ for the government and official conduct of all officials connected with the penitentiary and for the government of the prisoners in their deportment and conduct;
 - (b) **Promulgate administrative regulations for**~~[Prescribe]~~ the character of food and diet of the prisoners;~~[rules for]~~ the preservation of the health of the prisoners; the daily cleansing of the penitentiary; the cleanliness of the persons of the prisoners; the general sanitary government of the penitentiary and prisoners; the character of the labor; ~~the~~~~[and]~~ quantity of food and clothing; and the length of time during which the prisoners shall be employed daily;
 - (c) **Promulgate administrative regulations**~~[Adopt, amend, and rescind]~~, as the department deems necessary, ~~for~~~~[administrative regulations governing]~~ the disposition of abandoned, lost, or confiscated property of prisoners; and
 - (d) Cause the administrative regulations **promulgated**~~[prescribed]~~ by **the department**~~[them]~~, together with the law allowing commutation of time to prisoners for good conduct, to be printed and posted in conspicuous places in the cell houses and workshops.
- (2) The department may impose a reasonable fee for the use of medical facilities by a prisoner who has the ability to pay for the medical and dental care. These funds may be deducted from the prisoner's inmate account. A prisoner shall not be denied medical or dental treatment because he has insufficient funds in his inmate account.
- (3) The department may promulgate administrative regulations in accordance with KRS Chapter 13A to implement a program that provides for reimbursement of telehealth consultations.

Section 232. KRS 197.110 is amended to read as follows:

The Department of Corrections shall ~~promulgate~~~~make~~ administrative regulations it deems necessary and proper in relation to:

- (1) The classification of prisoners;
- (2) The terms and conditions under which prisoners may be assigned to work under the direction of any other state agency;
- (3) The adequate care, supervision, guarding, discipline, maintenance, transportation, and housing of prisoners when assigned to work outside of the prison. The department shall ascertain from the jailer of the county in which the work is being carried on if accommodations are available, and shall place as many prisoners as possible under the care of the jailer;
- (4) The payment of money to prisoners and their dependents for work performed, including the amount to be paid and the manner of the payment and distribution thereof;
- (5) Any other purposes as the department deems necessary and proper for carrying out the intent of this chapter.

Section 233. KRS 197.500 is amended to read as follows:

As used in KRS 197.505 to 197.525, unless the context otherwise requires:

- (1) ~~["Department" means the Department of Corrections;~~
- ~~(2) —~~ "Adult correctional facility" means any minimum or medium adult penal or correctional facility operated for the purpose of housing convicted felons for the department; and
- ~~(2)(3)~~ "Private provider" means a private legal entity authorized to do business in the Commonwealth and which is in the business of establishing, operating, and managing adult correctional facilities.

Section 234. KRS 197.505 is amended to read as follows:

- (1) The state may enter into contracts with a private provider to establish, operate, and manage adult correctional facilities. In all such contracts the state shall retain clear supervisory and monitoring powers over the operation and management of the adult correctional facility to insure that the inmates are properly cared for and that the employees of the facility and the public are adequately protected.
- (2) Any adult correctional facility operated by a private provider under this section shall ensure that all inmates housed in the facility, including those inmates housed under contract with another state, shall meet classification requirements as set forth by the department for the designated security level of the facility.
- (3) Any adult correctional facility contracted for pursuant to this section shall be constructed only in a county with an established **Department of** Kentucky State Police post or in a county in which at least two (2) State Police officers reside as a result of a duty assignment or in a county with a full-time police department.

Section 235. KRS 197.510 is amended to read as follows:

Any contract entered on or after July 15, 1988, between the state and a private provider for the operation and management of an adult correctional facility shall include terms which comply with at least the following:

- (1) Unless otherwise provided by KRS 197.505 to 197.525, any adult correctional facility contracted for pursuant to KRS 197.505 shall submit a plan to the department for achieving American Correctional Association standards within five (5) years, which is appropriate for the specific type of adult correctional facility.
- (2) The provisions of KRS Chapter 45A shall apply to any contract or any proposal for a contract authorized by KRS 197.505 to 197.525 for an adult correctional facility.
- (3) The adult correctional facility shall prepare an annual written budget of anticipated revenues and expenditures which is approved by the appropriate governing authority. The facility shall have written policies which govern revisions in the budget. The facility shall have a fiscal system which accounts for all income and expenditures on an on-going basis.
- (4) The adult correctional facility shall prepare and distribute to its governing authority and appropriate agencies including the department, at a minimum, the following documents: annual budget income and expenditure statements; funding source financial reports; and annual independent audit report.

- (5) The adult correctional facility shall have written fiscal policies and procedures adopted by the governing authority which include at a minimum: internal controls; petty cash; bonding; signature control on checks; resident funds; and employee expense reimbursement.
- (6) There shall be an annual independent audit of the adult correctional facility. The facility shall have a written policy for inventory control of all property and assets and for purchasing and requisitioning supplies and equipment. The facility shall use a method which documents and authorizes wage payment to employees and consultants.
- (7) The private provider shall develop and implement a plan for the dissemination of information about the adult correctional facility to the public, government agencies, and the media. The plan shall be made available to all persons. All documents and records, except financial records, maintained by the private provider shall be deemed public records as defined by KRS 61.870 and be subject to the provisions of KRS 61.872 to 61.884.
- (8) The adult correctional facility shall conform to all applicable zoning ordinances and all applicable state and local building codes, including the Kentucky Building Code, 1983 edition and subsequent modifications or replacements thereto.
- (9) The adult correctional facility shall comply with all applicable laws and regulations of the local and state government regarding sanitation, food service, safety, and health. Copies of inspections completed by the appropriate authorities shall be sent to the department.
- (10) The adult correctional facility shall comply with the provisions of the Life Safety Code, 1983 edition, National Fire Protection Association 101 and the regulations of the state or the local fire safety authority, whichever has primary jurisdiction over the adult correctional facility. Copies of the inspections completed by the appropriate authorities shall be sent to the department.
- (11) A minimum of sixty (60) square feet of floor space per resident shall be provided in the living area of the adult correctional facility. Other areas to be provided shall include space and furnishings to accommodate group meetings of the residents, private counseling space with adequate furniture, and a visiting area.
- (12) The adult correctional facility shall provide a variety of indoor and outdoor recreational and leisure time activities to include but not be limited to: television, radio, library materials, and recreational facilities. Telephone facilities shall be available on the premises, which are accessible to residents.
- (13) The adult correctional facility shall provide a level and quality of programs at least equal to those provided by state-operated facilities that house similar types of inmates and at a cost that provides the state with a savings of not less than ten percent (10%) of the cost of housing inmates in similar facilities and providing similar programs to those types of inmates in state-operated facilities.
- (14) The adult correctional facility shall be staffed twenty-four (24) hours per day seven (7) days per week. The staffing pattern shall be adequate to insure close inmate surveillance and maintenance of security within the facility. The staffing pattern shall address the program, transportation, and security needs of the facility. In determining security need, the proximity of the facility to neighborhood and schools shall be considered.
- (15) The adult correctional facility shall have a written personnel policy and employees shall be given a copy. The personnel policies shall include, at a minimum:
 - (a) Organization chart;
 - (b) Employment practices and procedures including in-service training and staff developing;
 - (c) Promotions;
 - (d) Job qualifications and job descriptions;
 - (e) Grievance and appeal procedures;
 - (f) Employee evaluation;
 - (g) Personnel records;
 - (h) Benefits;
 - (i) Holidays;
 - (j) Leave;

- (k) Hours of work;
 - (l) Salaries (or the base for determining salaries);
 - (m) Disciplinary procedures;
 - (n) Termination; and
 - (o) Resignation.
- (16) The adult correctional facility shall maintain written job descriptions and job qualifications for all positions in the facility including: job title, responsibilities of the positions, and required minimum experience and education. An affirmative action program shall be adopted by the governing authority. The correctional facility shall maintain a current, accurate, and confidential personnel record on each employee. The facility shall have written policy and procedures requiring an annual performance evaluation of all employees. This evaluation shall be reviewed and discussed with the employee.
- (17) Prior to employment, all employees of the adult correctional facility shall be subject to thorough background investigation to include criminal, medical, and employment history. All security employees of the facility shall be at least eighteen (18) years of age. The facility shall provide initial orientation for all new employees during the first week of employment. The facility shall comply with all governmental regulatory requirements related to employment and personnel practices. Personnel selection and assignments shall be based on merit.
- (18) The administrator of the adult correctional facility shall have a minimum of five (5) years experience in corrections or law enforcement and five (5) years experience in administration. The remaining staff of the facility shall have the same qualifications and training as the staff employed in similar positions in adult correctional facilities operated by the department.
- (19) The adult correctional facility shall provide the following services and programs, the extent to which shall be set forth in the contract between the state and the private provider but shall be consistent with the standards of the American Correctional Association:
- (a) Health and medical services;
 - (b) Food services;
 - (c) Mail, telephone use, and visitation;
 - (d) Access to legal services and legal materials;
 - (e) Vocational training;
 - (f) Educational programs;
 - (g) Counseling services including personal counseling;
 - (h) Drug and alcohol counseling; and
 - (i) Sanitation services.
- (20) The adult correctional facility shall have a written fire and emergency plan for the facility which shall be communicated to all employees and inmates and updated, if needed. The facility's written emergency plan shall be conspicuously posted in the facility. The facility staff shall document the conduct of quarterly emergency drills.
- (21) The adult correctional facility shall have a written policy restricting the use of physical force to instances of justifiable self-protection, prevention of property damage, and prevention of escapes, and only to the degree necessary. In compliance with applicable laws, the facility shall maintain and make public, written policies and procedures for conducting searches of residents and all areas of the facility, to control contraband and locate missing or stolen property. The facility shall have a written plan to control movement in and out of the facility. The facility shall have written procedures to account for the whereabouts of the residents at all times.
- (22) The adult correctional facility shall establish a procedure for inspecting all facility areas accessible to inmates for contraband and physical security at least weekly. Isolated security spot checks shall be conducted daily. Items considered as contraband or items permitted in the facility shall be clearly defined in the facility's rules.

- (23) The adult correctional facility shall report all suspected felonies to the *Department of* Kentucky State Police for investigation. A written report shall be made of all extraordinary or unusual occurrences within twenty-four (24) hours of the occurrence. This report shall be placed in the inmate's folder and a copy forwarded to the department. All these occurrences shall be promptly reported to the department verbally prior to submission of the written report. Extraordinary or unusual occurrences shall include but not be limited to:
- (a) Death of a resident;
 - (b) Attempted suicide or suicide;
 - (c) Serious injury, whether accidental or self-inflicted;
 - (d) Attempted escape or escape from confinement;
 - (e) Fire;
 - (f) Riot;
 - (g) Battery, whether by a staff member or resident;
 - (h) Sexual assaults; and
 - (i) Occurrence of contagious or infectious disease, or illness within the facility.
- (24) Each adult correctional facility shall have written policy and procedures for emergency situations including but not limited to:
- (a) Escapes;
 - (b) Taking of hostages;
 - (c) Riots;
 - (d) Food poisoning;
 - (e) Civil disturbances in the community;
 - (f) Natural disaster;
 - (g) Suicides; and
 - (h) Other deaths and disorder.
- (25) The adult correctional facility shall adopt a written policy and procedures which shall insure that the constitutional rights of inmates to voluntarily practice their own religious activities are protected, subject only to those limitations necessary to maintain order and security of the facility.
- (26) The adult correctional facility shall adopt a written policy which shall be implemented to insure that no inmate or group of inmates is in a position of control or authority over other inmates.
- (27) The adult correctional facility shall have a policy and procedure for recommending awarding of meritorious good time for inmates in accordance with policies and procedures of the department. The procedures shall include formation of a committee to include an administrator to screen all recommendations. The recommendations shall be sent to the department. Recommendations for restoration of good time shall be screened by the same committee and forwarded to the department.
- (28) If the adult correctional facility operates a canteen, all profits shall be spent for recreational programs for inmates. Prices shall be in accordance with those established by the Department of Corrections Inmate Canteen Board.
- (29) The department shall have the authority to conduct periodic, scheduled, and unannounced inspections of the adult correctional facility during the term of the contract. The department shall generally observe and monitor the operations of the adult correctional facility at least once per week.
- (30) The contract shall provide a hold harmless clause by which the private provider agrees to indemnify, defend, and hold harmless the Commonwealth, its officers, agents, and employees from:
- (a) Any claims or losses for service rendered by the private provider, person, or firm performing or supplying services in connection with performance of the contract;

- (b) Any claims or losses to any person or firm injured or damaged by the erroneous or negligent acts of the private provider, its officers, or employees in the performance of the contract;
 - (c) Any claims or losses resulting to any person or firm injured or damaged by the private provider, its officers, or employees by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by federal or Commonwealth regulations or statutes; and
 - (d) Any failure of the private provider, its officers, or employees to observe Kentucky laws, including but not limited to labor laws and minimum wage laws.
- (31) The contract shall require that the private provider give a performance bond to the Commonwealth as obligee, in form satisfactory to the Commonwealth, executed by a surety company authorized to do business in Kentucky and in the penal sum equal to: twenty percent (20%) multiplied by the maximum number of inmates to be housed in the adult correctional facility multiplied by three hundred sixty-five (365) and further multiplied by the rate to be paid the private provider per inmate per day.
- (32) The private provider shall provide public liability, property damage, and workers' compensation insurance, insuring, as they may appear, the interest of all parties of agreement against any and all claims which may arise out of the private provider's operations under the terms of this contract. If any carrier of the insurance exercises cancellation, notice shall be made immediately to the Commonwealth of the cancellation.
- (33) As set forth within the contract between the Department of Corrections and the private provider:
- (a) Failure of the private provider to provide the required services, products, or facilities shall entitle the department to withhold from the contract an amount up to two (2) times the estimated value per day per inmate for the service, product, or facility during the entire length of time which the failure to provide exists.
 - (b) The department shall in writing notify the provider of any failure to provide services, products, or facilities as required. A copy of the written notice shall be sent to the Finance and Administration Cabinet. The private provider shall have fourteen (14) calendar days from its receipt of the notice to abate the failure to provide and to notify the department of the corrective action taken by the private provider.
 - (c) In the event the department determines that the failure to provide has not been abated within fourteen (14) calendar days after the initial notice, the commissioner of the Department of Corrections shall hold, or assign the matter to a hearing officer for, a hearing and issue findings of fact, conclusions of law, and a recommended order.
 - (d) Failure to provide services, products, or facilities as required in this agreement shall result in an order to withhold from the contract an amount up to two (2) times the estimated value, as determined after a hearing, per day per inmate for the service, product, or facility during the entire length of time which the failure to provide exists.
 - (e) The withholding shall continue until such time as the failure to provide is corrected in the manner stated in the order.
 - (f) The department and private provider shall in good faith negotiate the actual fair value of the omitted service, product, or facility which shall be subtracted from the amount withheld. The balance of the withholding, if any, shall be promptly returned to the private provider upon final agreement of the department and private provider. Additional withholding from the contract shall be made by the department if an additional amount is due.
 - (g) The provider may appeal, within thirty (30) days, any order of the department to the Franklin Circuit Court.

Section 236. KRS 199.015 is amended to read as follows:

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

- (1) When a parent, tutor, or guardian notifies any employee of a state building that his or her child is lost or missing, the employee shall obtain from the parent, tutor, or guardian a detailed description of the minor,

including but not limited to the name, age, color of eyes, height, weight, clothing, and the shoes the child was wearing at the time the child was last seen before becoming lost or missing;

- (2) From the closest telephone available, the same employee shall alert the state building administrator or the person designated in the state building's "Code Adam" plan, who shall then notify the occupants of the state building through the loudspeaker system or through any other fast and effective means of communication that "Code Adam" has been activated;
- (3) The employee shall escort the parent, tutor, or guardian to the main door of the state building to help in identifying the child;
- (4) Persons designated by the administrator shall monitor all state building exits to ascertain that the minor does not leave the state building without the parent, tutor, or guardian. In addition, two (2) or more employees, as may be necessary, shall be assigned to search the parking areas of the state building. This process shall not entail the closing or locking of any door of the state building;
- (5) Any child, or person with a child, leaving the state building shall be asked to go through the main exit previously designated by the administrator. If, once there, the child or person wishes to leave the state building, he or she shall be allowed to do so after it has been determined that the minor who is leaving is not the child being searched for and that the person with the minor is the parent, tutor, or guardian of the child, and the person presents a government-issued photo identification;
- (6) After "Code Adam" has been announced through the state building's loudspeaker system or through any other fast and effective means of communication, the employees shall search throughout the entire state building, and at least two (2) employees, or more as deemed necessary, shall be assigned to each floor to certify that the minor is not present. Employees who are directly serving a member of the public at that time and employees who have been previously excluded by the administrator shall not be compelled to participate in the search;
- (7) If the minor is found unharmed and appears to have been simply lost or missing in the state building, the child shall be immediately taken to the parent, tutor, or guardian;
- (8) If the minor is found in the company of any person other than the child's parent, tutor, or guardian, any reasonable means shall be taken to delay the exit of the child and the person with whom the child was found from the state building until a peace officer arrives, the child and the person with whom the child is found both are properly identified, and the circumstances of the situation are determined;
- (9) If the minor is not found within a ten (10) minute period, the state building administrator shall notify a state or local law enforcement agency that a child is lost or missing and provide the information then known about the lost or missing child. The law enforcement agency shall respond to the scene and shall take control of the incident. The law enforcement agency may request that the local search and rescue coordinator provide additional resources to search for the lost or missing child. The law enforcement agency and the local dispatch center shall take the actions required by KRS 17.450, 17.460, and 39F.180;
- (10) Upon the location of the lost or missing child or the arrival of a peace officer from the law enforcement agency which was notified of the lost or missing child, whichever occurs earlier, the state building administrator shall cause an announcement of the ending of the "Code Adam" by the state building loudspeaker or other fast and effective means of communication; and
- (11) Upon the ending of the "Code Adam," the state building administrator shall prepare three (3) copies of a report of the incident, which shall:
 - (a) Be sent within three (3) working days to the secretary of the Finance and Administration Cabinet and the commissioner of the Department of *Kentucky* State Police; and
 - (b) Be kept in the administrative files of the state building for a period of three (3) years from the date of the incident.

Section 237. KRS 199.017 is amended to read as follows:

The secretary of the Finance and Administration Cabinet, in consultation with the Justice *and Public Safety* Cabinet through the Department of *Kentucky* State Police, shall:

- (1) Be responsible for coordinating implementation of the "Code Adam" program throughout the Commonwealth;
- (2) Provide training to administrators of state buildings and employees designated by those administrators in the implementation of the "Code Adam" program;

- (3) Provide training in procedures for the search of state buildings and grounds for lost and missing children;
- (4) Print and distribute signs to each public agency for use in each state building relating to the "Code Adam" program and how to initiate a "Code Adam." The signs shall be not less than twelve (12) inches square and have white letters and a purple background containing the information specified by the cabinet by administrative regulation;
- (5) Provide for annually conducting a "Code Adam" drill at each facility covered by the provisions of KRS 199.013 to 199.019;
- (6) Provide for the collection of statistics from each facility covered by the provisions of KRS 199.013 to 199.019 on each "Code Adam" within the state building;
- (7) Provide an annual report to the Governor, the Department of *Kentucky* State Police, the Legislative Research Commission, and the General Assembly on each "Code Adam" within the Commonwealth during the previous calendar year and the results of each "Code Adam" incident. The annual report shall be a public record and shall not include the name or other identifying information, other than gender and age, of the child; and
- (8) Promulgate administrative regulations necessary for the implementation of the "Code Adam" program as required by KRS 199.013 to 199.010.

Section 238. KRS 199.019 is amended to read as follows:

The secretary of the Finance and Administration Cabinet, in consultation with the Justice *and Public Safety* Cabinet through the Department of *Kentucky* State Police, may exempt any agency or state building which, due to the nature of the services provided by that agency or state building, is not visited by children. The agency or state building shall immediately report to the secretary of the Finance and Administration Cabinet when the agency or state building is likely to be visited by children on a frequent or continuing basis. Upon receipt of the notification from the state building administrator or agency that the state building is being visited by children, the exemption from compliance with the provisions of KRS 199.013 to 199.019 shall expire.

Section 239. KRS 199.462 is amended to read as follows:

- (1) Before an applicant is approved to provide foster care or relative caregiver services to a child, or approved to receive a child for adoption, the Cabinet for Health and Family Services shall:
 - (a) Require a criminal background investigation of the applicant and any of the applicant's adult household members by means of a fingerprint check by the Department of *Kentucky* State Police and the Federal Bureau of Investigation; or
 - (b) Request from the Justice *and Public Safety* Cabinet records of all conviction information for the applicant and any of the applicant's adult household members. The Justice *and Public Safety* Cabinet shall furnish the information to the Cabinet for Health and Family Services and shall also send a copy of the information to the applicant.
- (2) The request for records shall be on a form approved by the Justice *and Public Safety* Cabinet and the Justice *and Public Safety* Cabinet may charge a fee to be paid by the applicant for the actual cost of processing the request.
- (3) During a certified adoptive or foster home's annual reevaluation, the Cabinet for Health and Family Services may require a background investigation for each adult household member of the certified adoptive or foster home under subsections (1) and (2) of this section.
- (4) The Cabinet for Health and Family Services shall promulgate an administrative regulation to implement this section.

Section 240. KRS 199.473 is amended to read as follows:

- (1) All persons other than a child-placing agency or institution, the department, or persons excepted by KRS 199.470(4) or (5) who wish to place or receive a child shall make written application to the secretary for permission to place or receive a child.
- (2) Prior to the approval of an application to place or receive a child, the fee required pursuant to subsection (13) of this section shall be paid and a home study shall be completed. The purpose of the home study shall be to

review the background of the applicant and determine the suitability of the applicant to receive a child, taking into account at all times the best interest of the child for whom application to receive has been made.

- (3) (a) The home study shall be made in accordance with administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.
 - (b) The cabinet shall conduct the home study for an applicant whose total gross income is equal to or less than two hundred fifty percent (250%) of the federal poverty level guidelines issued each year by the federal government, unless the applicant submits a written request for the home study to be conducted by a licensed child-placing agency or institution. Upon request, the cabinet shall make information available to an applicant who does not meet the requirements of this paragraph to assist the applicant in obtaining a home study from a licensed child-placing agency approved to provide adoption services.
 - (c) A licensed child-placing agency approved to provide adoption services shall conduct the home study for an applicant whose gross total income is more than two hundred fifty percent (250%) of the federal poverty level guidelines issued each year by the federal government.
 - (d) Calculation of family size for this subsection shall include each child requested to be adopted.
 - (e) The portion of the home study pertaining to the home and family background shall be valid for one (1) year following the date of its completion by an adoption worker.
- (4) The adoption worker making the home study shall make a finding in writing recommending either that the application be granted or that the application be denied. The recommendation of the adoption worker shall then be reviewed by the secretary.
- (5) Based on the report and recommendation of the adoption worker making the home study, the secretary shall grant or refuse permission for the applicant to place or receive a child as early as practicable, but, in any case, the decision shall be made within sixty (60) days after the receipt of the application. In reaching a decision, the secretary shall be guided by the ability of the persons wishing to receive the child to give the child a suitable home, and shall at all times consider the best interest of the child from a financial, medical, psychological, and psychiatric standpoint.
- (6) If the application is refused, the secretary shall in general terms furnish in writing the reasons for his or her refusal.
- (7) Any person who seeks temporary custody of a child prior to the secretary's ruling on an application for adoption shall file a petition seeking temporary custody, with a notice of intent to adopt, with the Circuit Court that will have jurisdiction of the adoption proceedings. The clerk of the court shall send a notice of the filing of the petition to the cabinet. A hearing on the petition shall occur no later than seventy-two (72) hours after the filing of the petition, excluding weekends and holidays. Proceedings under this subsection shall be incorporated into the court's adoption file. If the adoption is not finalized within six (6) months of the filing of the petition and notice of intent, the court shall conduct a hearing on the status and custody of the child.
- (8) Upon a finding by the Circuit Court that the child should be placed prior to the secretary's ruling on the application, the Circuit Court may grant the applicant temporary custody of the child pending the decision of the secretary. Temporary custody shall not be granted to an applicant unless a background check, including but not limited to a criminal records check by the Justice *and Public Safety* Cabinet or the Administrative Office of the Courts and a background check of child abuse and neglect records maintained by the cabinet, has been submitted to and reviewed by the court. The background check required for temporary custody shall be part of the home study required under subsection (2) of this section. If the application is denied by the secretary, the temporary custody order shall be set aside and, upon motion of the cabinet or of the child's parent or parents, the Circuit Court may order the child returned to the biological parent or parents or the child's custody may be awarded to the cabinet, another licensed child-placing agency, or other individuals deemed appropriate by the court. This section shall not be deemed to permit the completion of any adoption proceeding without the approval of the secretary and compliance with KRS 615.030, if required.
- (9) In any case where the cabinet refuses to approve the placement of a child for adoption when requested by the parent or parents of the child, or refuses the request of any person or persons that a child be placed with that person or those persons for adoption, the decision of the secretary in so refusing shall be final unless within ten (10) days after notice of refusal, the biological or proposed adopting parent or parents shall appeal to the Circuit Court of the county in which the adoption is proposed. No placement shall be disapproved on the basis

of the religious, ethnic, racial, or interfaith background of the adoptive applicant, if the placement is made with the consent of the parent.

- (10) The cabinet may refuse to approve the placement of a child for adoption if the child's custodial parent is unwilling for the child to be placed for adoption with the proposed adoptive family. The cabinet may approve or deny the placement, in spite of the fact that the custodial parent or parents are unwilling to be interviewed by the cabinet or other approving entity, or if, after diligent efforts have been made, the adoption worker is unable to locate or interview the custodial parent or parents. The cabinet shall be made a party defendant to the appeal. In the hearing of an appeal, the court shall review the findings of the secretary and shall determine if the secretary has acted arbitrarily, unlawfully, or in a manner that constitutes an abuse of discretion.
- (11) If a child who does not fall within the exception provided for in KRS 199.470(4) or (5) is placed or received in a home without the court's review of the background check required under this section or the permission of the secretary for health and family services, or if permission to receive a child has been denied, a representative of the cabinet shall notify in writing or may petition the juvenile session of District Court of the county in which the child is found setting out the facts concerning the child. When the petition has been filed, the court shall take jurisdiction of the child and shall provide for it as it would provide for a dependent, neglected, or abused child under KRS Chapter 620, except that the child may not be placed in the home of the applicants who are to receive the child unless permission to do so is granted by the secretary or the action is ordered by a Kentucky court of competent jurisdiction.
- (12) When either the custodial parent or parents of the child to be placed or the persons wishing to receive the child reside out-of-state, the requirement of KRS 615.030, Interstate Compact on the Placement of Children, shall be met before the cabinet gives approval for the child's placement.
- (13) The secretary of the Cabinet for Health and Family Services shall be paid a nonrefundable fee of two hundred dollars (\$200) upon the filing of the written application for permission to place or receive a child. Payment shall be made by certified or cashier's check only. All funds collected under this section shall be deposited in a restricted account, which is hereby created, for the purpose of subsidizing an adoptive parent for suitable care of a special-needs child as authorized in KRS 199.555.
- (14) Nothing in this statute shall be construed to limit the authority of the cabinet or a child-placing institution or agency to determine the proper disposition of a child committed to it by the juvenile session of District Court or the Circuit Court, prior to the filing of an application to place or receive.

Section 241. KRS 205.177 is amended to read as follows:

- (1) Notwithstanding any existing state statute or regulation to the contrary, any pertinent information concerning individual clients, patients, or applicants in the possession of the Justice *and Public Safety* Cabinet, Cabinet for Health and Family Services, Department of Education, or any other state or local governmental agency may be shared with any authorized representative of any other state or local governmental agency of similar function if the agency has a direct, tangible, legitimate interest in the individual concerned or his *or her* immediate family.
- (2) Any state agency designated in subsection (1) of this section may share pertinent information concerning a client, patient, or applicant with any private or quasi-private agency when such agency has an agreement with that state agency assuring the confidentiality of all such information, and provided that the private or quasi-private agency has a direct, tangible, legitimate interest in the individual concerned or his *or her* immediate family.

Section 242. KRS 209.020 is amended to read as follows:

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

- (1) "Secretary" means the secretary of the Cabinet for Health and Family Services;
- (2) "Cabinet" means the Cabinet for Health and Family Services;
- (3) "Department" means the Department for Community Based Services of the Cabinet for Health and Family Services;
- (4) "Adult" means a person eighteen (18) years of age or older who, because of mental or physical dysfunctioning, is unable to manage his *or her* own resources, carry out the activity of daily living, or protect himself *or*

herself from neglect, exploitation, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services;

- (5) "Protective services" means agency services undertaken with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; and services directed toward seeking legal determination of whether or not the adult in need of protective services has been abused, neglected, or exploited and to ensure that he *or she* obtains suitable care in or out of his *or her* home;
- (6) "Caretaker" means an individual or institution who has been entrusted with or who has the responsibility for the care of the adult as a result of family relationship, or who has assumed the responsibility for the care of the adult person voluntarily or by contract, employment, legal duty, or agreement;
- (7) "Deception" means, but is not limited to:
 - (a) Creating or reinforcing a false impression, including a false impression as to law, value, intention, or other state of mind;
 - (b) Preventing another from acquiring information that would affect his or her judgment of a transaction; or
 - (c) Failing to correct a false impression that the deceiver previously created or reinforced, or that the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship;
- (8) "Abuse" means the infliction of injury, sexual abuse, unreasonable confinement, intimidation, or punishment that results in physical pain or injury, including mental injury;
- (9) "Exploitation" means obtaining or using another person's resources, including but not limited to funds, assets, or property, by deception, intimidation, or similar means, with the intent to deprive the person of those resources;
- (10) "Investigation" shall include, but is not limited to:
 - (a) A personal interview with the individual reported to be abused, neglected, or exploited. When abuse or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;
 - (b) An assessment of individual and environmental risk and safety factors;
 - (c) Identification of the perpetrator, if possible; and
 - (d) Identification by the Office of Inspector General of instances of failure by an administrator or management personnel of a regulated or licensed facility to adopt or enforce appropriate policies and procedures, if that failure contributed to or caused an adult under the facility's care to be abused, neglected, or exploited;
- (11) "Emergency" means that an adult is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself *or herself* or others;
- (12) "Emergency protective services" are protective services furnished an adult in an emergency;
- (13) "Protective placement" means the transfer of an adult from his *or her* present living arrangement to another;
- (14) "Court" means the Circuit Court or the District Court if no judge of that Circuit Court is present in the county;
- (15) "Records" means the medical, mental, health, and financial records of the adult that are in the possession of any hospital, firm, corporation, or other facility, if necessary to complete the investigation mandated in this chapter. These records shall not be disclosed for any purpose other than the purpose for which they have been obtained;
- (16) "Neglect" means a situation in which an adult is unable to perform or obtain for himself *or herself* the goods or services that are necessary to maintain his *or her* health or welfare, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult; and
- (17) "Authorized agency" means:

- (a) The Cabinet for Health and Family Services;
- (b) A law enforcement agency or the *Department of* Kentucky State Police;
- (c) The office of a Commonwealth's attorney or county attorney; or
- (d) The appropriate division of the Office of the Attorney General.

Section 243. KRS 209A.020 is amended to read as follows:

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

- (1) "Secretary" means the secretary of the Cabinet for Health and Family Services;
- (2) "Cabinet" means the Cabinet for Health and Family Services;
- (3) "Department" means the Department for Community Based Services of the Cabinet for Health and Family Services;
- (4) "Adult" means a person without regard to age who is the victim of abuse or neglect inflicted by a spouse;
- (5) "Protective services" means agency services undertaken with or on behalf of an adult in need of protective services who is being abused or neglected. These services may include but are not limited to conducting investigations of complaints of possible abuse or neglect to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action, including action under KRS Chapter 209, and social services aimed at preventing and remedying abuse or neglect;
- (6) "Abuse" means the infliction of injury, unreasonable confinement, intimidation, or punishment resulting in physical harm or pain, including mental injury;
- (7) "Investigation" shall include but is not limited to a personal interview with the individual reported to be abused or neglected. When abuse or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;
- (8) "Records" means the medical or mental health records of the adult that are in the possession of any individual, hospital, firm, corporation, or other facility if necessary to complete the investigation mandated in KRS 209.030(5);
- (9) "Neglect" means a situation in which a person deprives his *or her* spouse of reasonable services to maintain health and welfare; and
- (10) "Authorized agency" means:
 - (a) The Cabinet for Health and Family Services;
 - (b) A local law enforcement agency or the *Department of* Kentucky State Police; or
 - (c) The office of a Commonwealth's attorney or county attorney.

Section 244. KRS 210.502 is amended to read as follows:

- (1) There is created the Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses. The commission shall consist of:
 - (a) The secretary of the Cabinet for Health and Family Services;
 - (b) The secretary of the Justice *and Public Safety* Cabinet;
 - (c) The commissioner of the Department for Mental Health and Mental Retardation Services;
 - (d) The commissioner of the Department for Medicaid Services;
 - (e) The commissioner of the Department of Corrections;
 - (f) The commissioner of the Department of Juvenile Justice;
 - (g) The commissioner of the Department of Education;
 - (h) The executive director of the Office of Vocational Rehabilitation;
 - (i) The director of the Protection and Advocacy Division of the Department of Public Advocacy;

- (j) The director of the Division of Family Resource and Youth Services Centers;
 - (k) The director of the Division of Aging Services of the Cabinet for Health and Family Services;
 - (l) The executive director of the *Office of Drug Control* ~~[Kentucky Agency for Substance Abuse]~~ Policy;
 - (m) ~~[The executive director of the Criminal Justice Council;~~
 - ~~(n) —]~~ The director of the Administrative Office of the Courts;
 - ~~(n) [(e)]~~ The chief executive officer of the Kentucky Housing Corporation;
 - ~~(o) [(p)]~~ The executive director of the Office of Transportation Delivery of the Transportation Cabinet;
 - ~~(p) [(q)]~~ The commissioner of the Department of Public Health;
 - ~~(q) [(r)]~~ Three (3) members of the House of Representatives who are members of the Health and Welfare Committee or the Appropriations and Revenue Committee, appointed by the Speaker of the House;
 - ~~(r) [(s)]~~ Three (3) members of the Senate who are members of the Health and Welfare Committee or the Appropriations and Revenue Committee, appointed by the Senate President;
 - ~~(s) [(t)]~~ A chairperson and one (1) alternate who is a chairperson of a regional planning council appointed by the secretary of the Cabinet for Health and Family Services from a list of five (5) chairpersons submitted by the Kentucky Association of Regional Mental Health/Mental Retardation Programs;
 - ~~(t) [(u)]~~ A consumer and one (1) alternate who is a consumer of mental health or substance abuse services, who is over age eighteen (18), appointed by the secretary of the Cabinet for Health and Family Services from a list of up to three (3) consumers submitted by any consumer advocacy organization operating within Kentucky or submitted by any regional planning council established under KRS 210.506; and
 - ~~(u) [(v)]~~ An adult family member and one (1) alternate who is an adult family member of a consumer of mental health or substance abuse services appointed by the secretary of the Cabinet for Health and Family Services from a list of up to three (3) persons submitted by any family advocacy organization operating within Kentucky or submitted by any regional planning council established under KRS 210.506.
- (2) The secretary of the Cabinet for Health and Family Services and one (1) member of the General Assembly appointed to the commission shall serve as co-chairs of the commission.
 - (3) Members designated in subsection (1)(a) to ~~(r) [(s)]~~ of this section shall serve during their terms of office.
 - (4) Members and alternates designated in subsection (1)~~(s) [(t)]~~ to ~~(u) [(v)]~~ of this section shall serve a term of two (2) years and may be reappointed for one (1) additional term. These members may be reimbursed for travel expenses in accordance with administrative regulations governing reimbursement for travel for state employees.

Section 245. KRS 213.061 is amended to read as follows:

- (1) Upon notification by the Justice *and Public Safety* Cabinet that a child born in the Commonwealth is missing, the state registrar of vital statistics shall flag the birth certificate record of the child in such a manner that whenever a copy of the birth certificate or information regarding the birth record is requested, the state registrar shall be alerted to the fact that the certificate is that of a missing child.
- (2) Upon notification by the Justice *and Public Safety* Cabinet that a missing child has been recovered, the state registrar shall remove the flag from the child's birth certificate record.
- (3) In response to any inquiry for a copy of a flagged birth certificate of a missing child, the state registrar shall not provide a copy of the birth certificate except as approved by the Justice *and Public Safety* Cabinet.
- (4) When a copy of a flagged birth certificate is requested in person, the state registrar or the designee accepting the request shall inform the person making the request that a copy of a certificate will be mailed to the requester. The state registrar shall, upon the departure of the requesting person, immediately notify the Justice *and Public Safety* Cabinet as to the request and the information obtained pursuant to this subsection.
- (5) When a copy of a flagged birth certificate is requested in writing, the state registrar shall immediately notify the Justice *and Public Safety* Cabinet as to the request and shall provide a copy of the written request.

Section 246. KRS 216.533 is amended to read as follows:

- (1) A long-term care facility owned, managed, or operated by the Department for Mental Health and Mental Retardation Services shall request an in-state criminal background information check from the Justice *and Public Safety* Cabinet or Administrative Office of the Courts for each applicant recommended for employment. Out-of-state criminal background information checks shall be obtained for any applicant recommended for employment who has resided or been employed outside of the Commonwealth.
- (2) No facility specified in subsection (1) of this section shall knowingly employ any person who has been convicted of a felony offense under:
 - (a) KRS Chapter 209;
 - (b) KRS Chapter 218A;
 - (c) KRS 507.020, 507.030, and 507.040;
 - (d) KRS Chapter 509;
 - (e) KRS Chapter 510;
 - (f) KRS Chapter 511;
 - (g) KRS Chapter 513;
 - (h) KRS 514.030;
 - (i) KRS Chapter 530;
 - (j) KRS Chapter 531;
 - (k) KRS 508.010, 508.020, 508.030, and 508.032;
 - (l) A criminal statute of the United States or another state similar to paragraphs (a) to (k) of this subsection; or
 - (m) A violation of the uniform code of military justice or military regulation similar to paragraphs (a) to (k) of this subsection which has caused the person to be discharged from the Armed Forces of the United States.
- (3) A person who has received a pardon for an offense specified in subsection (2) or has had the record of such an offense expunged may be employed.
- (4) Department for Mental Health and Mental Retardation facilities specified in subsection (1) of this section shall be exempt from the provisions of KRS 216.789(1).

Section 247. KRS 216.787 is amended to read as follows:

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

Section 248. KRS 216.789 is amended to read as follows:

- (1) No long-term care facility as defined by KRS 216.535(1), nursing pool providing staff to a nursing facility, or assisted-living community shall knowingly employ a person in a position which involves providing direct services to a resident or client if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a sexual crime.

- (2) A nursing facility, nursing pool providing staff to a nursing facility, or assisted-living community may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor if the crime is not related to abuse, neglect, or exploitation of an adult.
- (3) Each long-term care facility as defined by KRS 216.535(1), nursing pool providing staff to a nursing facility, or assisted-living community shall request all conviction information from the Justice *and Public Safety* Cabinet for any applicant for employment pursuant to KRS 216.793.
- (4) The long-term care facility, nursing pool providing staff to a nursing facility, or assisted-living community may temporarily employ an applicant pending the receipt of the conviction information.

Section 249. KRS 216.793 is amended to read as follows:

- (1) Each application form provided by the employer, or each application form provided by a facility either contracted or operated by the Department for Mental Health and Mental Retardation Services of the Cabinet for Health and Family Services, to the applicant for initial employment in an assisted-living community nursing facility, or nursing pool providing staff to a nursing facility, or in a position funded by the Department for Community Based Services of the Cabinet for Health and Family Services or the Division of Aging Services, Department for Human Support Services of the Cabinet for Health and Family Services and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form or through a process approved by the Justice *and Public Safety* Cabinet or the Administrative Office of the Courts. The Justice *and Public Safety* Cabinet or the Administrative Office of the Courts may charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of processing the request.

Section 250. KRS 216B.400 is amended to read as follows:

- (1) Where a person has been determined to be in need of emergency care by any person with admitting authority, no such person shall be denied admission by reason only of his *or her* inability to pay for services to be rendered by the hospital.
- (2) Every hospital of this state which offers emergency services shall provide that a physician or a sexual assault nurse examiner, who shall be a registered nurse licensed in the Commonwealth and credentialed by the Kentucky Board of Nursing as provided under KRS 314.142, is available on call twenty-four (24) hours each day for the examinations of persons reported to any law enforcement agency to be victims of sexual offenses as defined by KRS 510.010 to 510.140, 530.020, 530.064(1)(a), and 531.310.
- (3) An examination provided in accordance with this section of a victim of a sexual offense may be performed in a sexual assault examination facility as defined in KRS 216B.015. An examination under this section shall apply only to an examination of a victim.
- (4) The physician or sexual assault nurse examiner, acting under a statewide medical protocol which shall be developed by the chief medical examiner, and promulgated by the secretary of justice *and public safety* pursuant to KRS Chapter 13A shall, upon the request of any peace officer or prosecuting attorney, and with the consent of the reported victim, or upon the request of the reported victim, examine such person for the purpose of gathering physical evidence. This examination shall include but not be limited to:
 - (a) Basic treatment and evidence gathering services; and
 - (b) Laboratory tests, as appropriate.
- (5) Each reported victim shall be informed of available services for treatment of venereal disease, pregnancy, and other medical and psychiatric problems. Pregnancy counseling shall not include abortion counseling or referral information.
- (6) Each reported victim shall be informed of available crisis intervention or other mental health services provided by regional rape crisis centers providing services to victims of sexual assault.
- (7) Notwithstanding any other provision of law, a minor may consent to examination under this section. This consent is not subject to disaffirmance because of minority, and consent of the parents or guardians of the minor is not required for the examination.

- (8) (a) The examinations provided in accordance with this section shall be paid for by the Crime Victims' Compensation Board at a rate to be determined by the administrative regulation promulgated by the board after consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.
 - (b) Upon receipt of a completed original claim form supplied by the board and itemized billing for a forensic sexual assault examination, the board shall reimburse the hospital or sexual assault examination facility, and the physician or sexual assault nurse examiner as provided in administrative regulations promulgated by the board pursuant to KRS Chapter 13A. Reimbursement shall be made to an out-of-state nurse who is credentialed in the other state to provide sexual assault examinations, an out-of-state hospital, or an out-of-state physician if the sexual assault occurred in Kentucky.
 - (c) Independent investigation by the Crime Victims' Compensation Board shall not be required for payment of claims under this section; however, the board may require additional documentation or proof that the forensic medical examination was performed.
- (9) No charge shall be made to the victim for sexual assault examinations by the hospital, the sexual assault examination facility, the physician, the sexual assault nurse examiner, the victim's insurance carrier, or the Commonwealth.

Section 251. KRS 217.184 is amended to read as follows:

- (1) All police officers and deputy sheriffs, directly employed full-time by state, county, city, or urban-county governments, the *Department of Kentucky* State Police, the Cabinet for Health and Family Services, the offices of all city, county, and Commonwealth's attorneys, the Office of the Attorney General, and any of their officers and agents, within their respective jurisdictions, shall enforce KRS 217.207, 217.208, 217.209, 217.181, and 217.182 relating to legend drugs and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to legend drugs.
- (2) Designated agents of the Cabinet for Health and Family Services and the Kentucky Board of Pharmacy are empowered to remove from the files of any pharmacy or other custodian any prescription or other legend drug record upon tendering a receipt. The receipt shall be sufficiently detailed to accurately identify the record and a copy of the records seized shall be returned to the pharmacist within a reasonable amount of time.

Section 252. KRS 218A.202 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy.
- (2) A practitioner or a pharmacist shall not have to pay a fee or tax specifically dedicated to the operation of the system.
- (3) Every dispenser within the Commonwealth or any other dispenser who has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy shall report to the Cabinet for Health and Family Services the data required by this section in a timely manner as prescribed by the cabinet except that reporting shall not be required for:
 - (a) A drug administered directly to a patient; or
 - (b) A drug dispensed by a practitioner at a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours.
- (4) Data for each controlled substance that is dispensed shall include but not be limited to the following:
 - (a) Patient identifier;
 - (b) Drug dispensed;
 - (c) Date of dispensing;
 - (d) Quantity dispensed;
 - (e) Prescriber; and

- (f) Dispenser.
- (5) The data shall be provided in the electronic format specified by the Cabinet for Health and Family Services unless a waiver has been granted by the cabinet to an individual dispenser. The cabinet shall establish acceptable error tolerance rates for data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or inaccurate data shall be corrected upon notification by the cabinet if the dispenser exceeds these error tolerance rates.
- (6) The Cabinet for Health and Family Services shall be authorized to provide data to:
 - (a) A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;
 - (b) A Kentucky peace officer certified pursuant to KRS 15.380 to 15.404, a certified or full-time peace officer of another state, or a federal peace officer whose duty is to enforce the laws of this Commonwealth, of another state, or of the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;
 - (c) A state-operated Medicaid program;
 - (d) A properly convened grand jury pursuant to a subpoena properly issued for the records;
 - (e) A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient;
 - (f) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Medical Licensure, for any physician who is:
 - 1. Associated in a partnership or other business entity with a physician who is already under investigation by the Board of Medical Licensure for improper prescribing practices;
 - 2. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or
 - 3. In a designated geographic area for which a report on another physician in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area;
 - (g) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Nursing, for any advanced registered nurse practitioner who is:
 - 1. Associated in a partnership or other business entity with a physician who is already under investigation by the Kentucky Board of Medical Licensure for improper prescribing practices;
 - 2. Associated in a partnership or other business entity with an advanced registered nurse practitioner who is already under investigation by the Board of Nursing for improper prescribing practices;
 - 3. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or
 - 4. In a designated geographic area for which a report on a physician or another advanced registered nurse practitioner in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area; or
 - (h) A judge or a probation or parole officer administering a diversion or probation program of a criminal defendant arising out of a violation of this chapter or of a criminal defendant who is documented by the court as a substance abuser who is eligible to participate in a court-ordered drug diversion or probation program.
- (7) The Department for Medicaid Services may use any data or reports from the system for the purpose of identifying Medicaid recipients whose usage of controlled substances may be appropriately managed by a single outpatient pharmacy or primary care physician.
- (8) A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except by order of a court of competent jurisdiction, except that:

- (a) A peace officer specified in subsection (6)(b) of this section who is authorized to receive data or a report may share that information with other peace officers specified in subsection (6)(b) of this section authorized to receive data or a report if the peace officers specified in subsection (6)(b) of this section are working on a bona fide specific investigation involving a designated person. Both the person providing and the person receiving the data or report under this paragraph shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by each law enforcement agency engaged in the investigation; and
 - (b) A representative of the Department for Medicaid Services may share data or reports regarding overutilization by Medicaid recipients with a board designated in subsection (6)(a) of this section, or with a law enforcement officer designated in subsection (6)(b) of this section; and
 - (c) The Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.
- (9) The Cabinet for Health and Family Services, all peace officers specified in subsection (6)(b) of this section, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.
- (10) The data and any report obtained therefrom shall not be a public record, except that the Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.
- (11) Knowing failure by a dispenser to transmit data to the cabinet as required by subsection (3), (4), or (5) of this section shall be a Class A misdemeanor.
- (12) Knowing disclosure of transmitted data to a person not authorized by subsection (6) to subsection (8) of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide specific investigation, shall be a Class D felony.
- (13) The Commonwealth Office of Technology, in consultation with the Cabinet for Health and Family Services, shall submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot project to study a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances. The pilot project shall:
- (a) Be conducted in two (2) rural counties that have an interactive real-time electronic information system in place for monitoring patient utilization of health and social services through a federally funded community access program; and
 - (b) Study the use of an interactive system that includes a relational data base with query capability.
- (14) Provisions in this section that relate to data collection, disclosure, access, and penalties shall apply to the pilot project authorized under subsection (13) of this section.
- (15) The Cabinet for Health and Family Services may limit the length of time that data remain in the electronic system. Any data removed from the system shall be archived and subject to retrieval within a reasonable time after a request from a person authorized to review data under this section.
- (16) (a) The Cabinet for Health and Family Services shall work with each board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances for the development of a continuing education program about the purposes and uses of the electronic system for monitoring established in this section.
- (b) The cabinet shall work with the Kentucky Bar Association for the development of a continuing education program for attorneys about the purposes and uses of the electronic system for monitoring established in this section.
- (c) The cabinet shall work with the Justice *and Public Safety* Cabinet for the development of a continuing education program for law enforcement officers about the purposes and users of the electronic system for monitoring established in this section.

Section 253. KRS 218A.240 is amended to read as follows:

- (1) All police officers and deputy sheriffs directly employed full-time by state, county, city, or urban-county governments, the *Department of Kentucky* State Police, the Cabinet for Health and Family Services, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, shall enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.
- (2) For the purpose of enforcing the provisions of this chapter, the designated agents of the Cabinet for Health and Family Services shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths, to enter upon premises at all times for the purpose of making inspections, to seize evidence, to interrogate all persons, to require the production of prescriptions, of books, papers, documents or other evidence, to employ special investigators, and to expend funds for the purpose of obtaining evidence and to use data obtained under KRS 218A.202(7) in any administrative proceeding before the cabinet.
- (3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the Cabinet for Health and Family Services.
- (4) Designated agents of the Cabinet for Health and Family Services and the Kentucky Board of Pharmacy are empowered to remove from the files of a pharmacy or the custodian of records for that pharmacy any controlled substance prescription or other controlled substance record upon tendering a receipt. The receipt shall be sufficiently detailed to accurately identify the record. A receipt for the record shall be a defense to a charge of failure to maintain the record.
- (5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter, or to forfeit any property subject to forfeiture under KRS 218A.410, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.
 - (a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.
 - (b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.
 - (c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his *or her* costs, including a reasonable attorney's fee.
 - (d) Distribution of funds under this section shall be made in the same manner as in KRS 218A.435, except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his *or her* percentage of the funds shall go to the agency initiating the forfeiture action.
- (6) The Cabinet for Health and Family Services shall make or cause to be made examinations of samples secured under the provisions of this chapter to determine whether any provision has been violated.
- (7)
 - (a) The Cabinet for Health and Family Services shall use the data compiled in the electronic system created in KRS 218A.202 for investigations, research, statistical analysis, and educational purposes, and shall proactively identify trends in controlled substance usage and other potential problem areas. Only cabinet personnel who have undergone training for the electronic system and who have been approved to use the system shall be authorized access to the data and reports under this subsection. The cabinet shall notify a board responsible for the licensure, regulation, or discipline of each practitioner, pharmacist, or other person who is authorized to prescribe, administer, or dispense controlled substances, if a report or analysis conducted under this subsection indicates that further investigation about inappropriate or unlawful prescribing or dispensing may be necessary by the board.
 - (b) The cabinet shall develop criteria, in collaboration with the Board of Medical Licensure and the Board of Pharmacy, to be used to generate trend reports from the data obtained by the system. Meetings at which the criteria are developed shall be meetings, as defined in KRS 61.805, that comply with the open meetings laws, KRS 61.805 to 61.850.
 - (c) The cabinet shall, on a quarterly basis, publish trend reports from the data obtained by the system.

- (d) Peace officers authorized to receive data under KRS 218A.202 may request trend reports not specifically published pursuant to paragraph (c) of this subsection. A report under this paragraph may be based upon the criteria developed under paragraph (b) of this subsection or upon any of the data collected pursuant to KRS 218A.202(4), except that the report shall not identify an individual prescriber, dispenser, or patient.
- (e) No trend report generated under this subsection shall identify an individual prescriber, dispenser, or patient.

Section 254. KRS 218A.435 is amended to read as follows:

- (1) There is created a trust and revolving fund in the executive branch of state government to be known as the "Asset Forfeiture Trust Fund" referred to in this section as the "trust fund."
- (2) The trust fund shall consist of proceeds from sale of property forfeited to the Commonwealth pursuant to KRS 218A.410, any moneys as may be appropriated by the General Assembly, and any investment interest earned on the fund. The moneys in this fund are intended to supplement any funds appropriated by the General Assembly to the agency which will receive disbursements from the trust fund as provided in this section.
- (3) The trust fund shall be managed by the state Office of Financial Management and all moneys in excess of the amount to be disbursed in a given fiscal year shall be invested to maximize returns. The principal and any interest earnings of the trust fund shall at no time lapse to the general fund.
- (4) The trust fund shall be administered and audited by the Justice *and Public Safety* Cabinet. The secretary of justice *and public safety* or his *or her* designee shall promulgate administrative regulations necessary to further the purposes of KRS 218A.405 to 218A.460.
- (5) The trust fund shall be disbursed in accordance with the provisions of subsection (6) of this section. All interest accumulated on the fund shall immediately be available for disbursement to the Justice *and Public Safety* Cabinet for costs associated with administration of the fund.
- (6) The Justice *and Public Safety* Cabinet shall, upon advice from the Office of Financial Management, allocate the moneys in the fund quarterly, on a percentage basis, as provided in subsection (7) of this section.
- (7) The principal of the trust fund shall be distributed as follows:
 - (a) Eighteen percent (18%) of the funds received in any fiscal year shall be allocated to the unified prosecutorial system to be disbursed by the Attorney General to those Commonwealth's attorneys or county attorneys who have participated in the forfeiture case;
 - (b) Thirty-six percent (36%) of the funds received in any fiscal year shall be allocated to the Cabinet for Health and Family Services to be used solely for the purpose of drug and alcohol abuse education, prevention, and treatment;
 - (c) Thirty-six percent (36%) of the funds received in any fiscal year shall be allocated to the Department of Corrections to be used solely for programs related to drug enforcement and incarceration; and
 - (d) Ten percent (10%) of the funds received in any fiscal year shall be allocated to the Justice *and Public Safety* Cabinet to be used solely for the purpose of: training related to asset forfeiture; printing program-related training materials, such as manuals or handbooks; or payments to state or local agencies for programs relative to crime prevention, drug abuse prevention, general law enforcement purposes, or other similar purposes relating to drug enforcement.
- (8) The Attorney General, the secretary of the Cabinet for Health and Family Services, the commissioner of the Department of Corrections, and the secretary of the Justice *and Public Safety* Cabinet or their designees shall each promulgate administrative regulations which itemize the programs on which the moneys allocated from the trust fund to their respective agencies shall be spent and the method by which those moneys shall be disbursed to local entities.
- (9) On July 13, 1990, each state and local law enforcement agency which seizes property for the purpose of forfeiture under KRS 218A.410 shall, prior to being eligible for the receipt of grants from the trust fund, adopt policies relating to the seizure, maintenance, storage, and care of property pending forfeiture which are in compliance with or which substantially comply with the model policy for seizure of forfeitable assets by law enforcement agencies published by the Department of Criminal Justice Training. However, a state or local law

enforcement agency may adopt policies that are more restrictive on the agency than those contained in the model policy and that fairly and uniformly implement the provisions of this chapter.

- (10) On July 13, 1990, each state or local law enforcement agency which seizes property for the purpose of forfeiture under KRS 218A.410 shall, prior to being eligible to receive grants from the trust fund, have one (1) or more officers currently employed attend asset-forfeiture training as approved by the Kentucky Law Enforcement Council which shall approve a curriculum of study for asset-forfeiture training.
- (11) Other provisions of this section notwithstanding, any vehicle seized by a law enforcement agency which is forfeited pursuant to this chapter may be retained by the seizing agency for official use or sold within its discretion. Proceeds from the sale shall remain with the agency and shall not be paid into the trust fund and shall not be considered for purposes of the limits established in subsection (12) of this section. The moneys shall be utilized for purposes consistent with KRS 218A.405 to 218A.460. The seizing agency shall be required to pay any bona fide perfected security interest on any vehicle so forfeited.
- (12) Other provisions of law notwithstanding, the first fifty thousand dollars (\$50,000) of forfeited coin or currency or of the proceeds from sale of any property forfeited pursuant to this chapter which was seized or forfeited by a single order of forfeiture, shall not be paid into the fund but ninety percent (90%) shall be paid to the law enforcement agency or agencies which seized the property to be used for direct law enforcement purposes and ten percent (10%) to the office of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding. The moneys are intended to supplement any funds appropriated to the recipient and shall not supplant other funding of any recipient. In addition, forty-five percent (45%) of all proceeds above fifty thousand dollars (\$50,000) shall not be paid into the fund but shall be retained by the law enforcement agency or agencies which seized the property to be used for direct law enforcement purposes.
- (13) When money or property is seized in a joint operation involving more than one (1) law enforcement agency, or prosecutorial office, the apportionment of funds to each pursuant to subsection (7)(a) of this section, or pursuant to subsection (12) of this section, shall be made among the agencies in a manner to reflect the degree of participation of each agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based. The trial court shall determine the proper division and include the determination in the final order of forfeiture.

Section 255. KRS 218A.440 is amended to read as follows:

- (1) Each law enforcement agency seizing money or property pursuant to KRS 218A.415 shall, at the close of each fiscal year, file a statement with the Auditor of Public Accounts, and with the secretary of justice *and public safety* containing, a detailed listing of all money and property seized in that fiscal year and the disposition thereof. The listing shall identify all property so seized.
- (2) Any agency failing to report as required by this section shall be liable to the state for the full value of all property and money so seized. The Attorney General shall institute civil actions for recovery of money or property obtained or retained in violation of KRS 218A.405 to 218A.460.
- (3) The Auditor of Public Accounts, the secretary of justice *and public safety* or the Attorney General may at any time initiate an inquiry to determine that any agency is utilizing proceeds from the fund established in KRS 218A.435 in accordance with law, or an inquiry to determine that property is being forfeited as required by KRS 218A.405 to 218A.460.

Section 256. KRS 222.211 is amended to read as follows:

- (1) The cabinet shall, in conjunction with *the Office of Drug Control Policy and KY-ASAP* and in furtherance of the strategic plan developed in *Section 11 of this Act* ~~KRS 12.332~~, coordinate matters affecting tobacco addiction and alcohol and other drug abuse in the Commonwealth and shall assure that there is the provision of prevention, intervention, and treatment services for both juveniles and adults to address the problems of tobacco addiction and alcohol and other drug abuse within individuals, families, and communities; that the coordination of these matters shall be done in cooperation with public and private agencies, business, and industry; and that technical assistance, training, and consultation services shall be provided within budgetary limitations when required. The cabinet may promulgate administrative regulations under KRS Chapter 13A to carry out its powers and duties under this chapter. The cabinet shall utilize community mental health centers and existing facilities and services within the private sector when possible. The cabinet shall be responsible for assuring that the following services are available:

- (a) Primary prevention services directed to the general population and identified target groups for the purposes of avoiding the onset of tobacco addiction and alcohol and other drug abuse related problems and enhancing the general level of health of the target groups. The purpose of the services shall be to provide individuals with the information and skills necessary to make healthy decisions regarding the use or nonuse of tobacco, alcohol, and other drugs as well as to influence environmental factors, such as social policies and norms which will support healthy lifestyle;
 - (b) Intervention services for the purpose of identifying, motivating, and referring individuals in need of tobacco addiction and alcohol and other drug abuse education or treatment services. Services may be provided in settings such as industry and business, schools, health, and social service agencies;
 - (c) Detoxification services on a twenty-four (24) hour basis in or near population centers which meet the immediate medical and physical needs of persons intoxicated from the use of alcohol or drugs, or both, including necessary diagnostic and referral services. The services shall be provided in either a hospital or a licensed alcohol and other drug abuse program;
 - (d) Rehabilitation services offered on an inpatient or outpatient basis for the purposes of treating an individual's alcohol and other drug abuse problem. The services shall be provided in a licensed alcohol and other drug abuse program;
 - (e) Therapeutic services to family members of alcohol and other drug abusers for the purpose of reducing or eliminating dysfunctional behavior that may occur within individuals who are emotionally, socially, and sometimes physically dependent on an alcohol or other drug abuser. The services shall be offered primarily on a outpatient basis;
 - (f) Inpatient psychiatric services for those alcohol and other drug abusers whose diagnosis reflects both serious mental health disturbances as well as alcohol and other drug abuse disorders;
 - (g) Training programs for personnel working in the field of prevention, intervention, and treatment of tobacco addiction and alcohol and other drug abuse problems; and
 - (h) Driving under the influence services to include assessment, education, and treatment for persons convicted of operating a motor vehicle, while under the influence of alcohol or other substance which may impair driving ability, pursuant to KRS Chapter 189A.
- (2) The cabinet shall comply with all policy recommendations of *the Office of Drug Control Policy and KY-ASAP*, and shall honor requests for information from the *Office of Drug Control* ~~Kentucky Agency for Substance Abuse~~ Policy created under *Section 40 of this Act* ~~[KRS 12.330]~~.

Section 257. KRS 224.46-560 is amended to read as follows:

The cabinet shall promulgate *administrative* regulations establishing standards applicable to transporters of hazardous waste regarding record keeping, notification and compliance with the manifest system. The Transportation Cabinet and the Justice *and Public Safety* Cabinet shall cooperate with and assist the cabinet in implementing and enforcing the transportation provisions of any state hazardous waste regulations promulgated pursuant to this chapter. The specific nature and details of the assistance effort shall be established by a formal cooperative agreement acceptable to the cabinets.

Section 258. KRS 226.070 is amended to read as follows:

- (1) Every pawnbroker in a city or in the unincorporated area of any county shall by 11 a.m. each day, make available to the chief of police of the city, the chief law enforcement officer of the county, or to the *Department of* Kentucky State Police, a true and correct written report of all goods received by him *or her*, whether by pawn or purchase, during the twenty-four (24) hours preceding each report. The report shall describe the goods as accurately as practicable.
- (2) The chief of police of the city, the chief law enforcement officer of the county, or the *Department of* Kentucky State Police shall furnish blanks for the reports required by subsection (1) of this section.

Section 259. KRS 227.240 is amended to read as follows:

The chief of each fire department, sheriff, or local deputy marshal ordered under KRS 227.230 shall immediately investigate the origin and circumstances of a fire in his *or her* area and determine the cause of the fire so far as

practicable. If it appears that the fire is of suspicious origin he *or she* shall immediately notify the state fire marshal and the commissioner of the *Department of Kentucky* State Police.

Section 260. KRS 227.275 is amended to read as follows:

- (1) The commissioner, Department of *Kentucky* State Police, may designate officers and employees of the Department of *Kentucky* State Police to investigate and enforce the provisions against arson and arson related offenses occurring within the state and such officers when duly authorized by the commissioner, Department of *Kentucky* State Police, shall have the general powers of a peace officer for the prevention of other offenses against the Commonwealth.
- (2) Each arson investigator so appointed shall, before entering upon the discharge of his *or her* various duties, take an oath before a person authorized to administer oaths to faithfully discharge his *or her* duties, and the oath shall be subscribed by the person taking it and filed in the records of the department.
- (3) Each of said persons shall give such bond as the commissioner, Department of *Kentucky* State Police, may designate and with such surety as required by the commissioner, Department of *Kentucky* State Police, conditioned upon faithful performance of his *or her* duties.

Section 261. KRS 227.290 is amended to read as follows:

If, after an investigation or examination, the commissioner, Department of *Kentucky* State Police, believes that the evidence concerning a fire indicates that a crime has been committed he *or she* shall furnish all data of an evidentiary nature in his *or her* possession to the county attorney of the county in which the fire took place, or the Commonwealth's attorney in that district, and request that such attorney institute such criminal proceeding as the evidence warrants.

Section 262. KRS 230.310 is amended to read as follows:

Every person not required to be licensed under KRS 230.300 who desires to participate in horse racing in the Commonwealth as a horse owner, trainer, jockey, apprentice jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, shall first apply to the authority for a license to participate in the activity on association grounds during a race meeting. No person required to be licensed by this section may participate in any activity required to be licensed on association grounds during a race meeting without a valid license therefor. An applicant for a license shall submit to the authority fingerprints as may be required and other information necessary and reasonable for processing a license application. The authority is authorized to exchange fingerprint data with the *Department of Kentucky* State Police and the Federal Bureau of Investigation in order to conduct a criminal history background check of an applicant. The authority may issue a license if it finds that the financial responsibility, age, experience, reputation, competence, and general fitness of the applicant to perform the activity permitted by a license are consistent with the best interest of racing and the maintenance of the honesty, integrity, and high quality thereof. A license shall be issued for the calendar year in which it is issued and may be renewed by the authority. The license shall be valid at all horse race meetings in the Commonwealth during the period for which it is issued unless suspended or revoked under the administrative regulations promulgated by the authority under this chapter. With respect to horse owners and trainers, the authority may promulgate administrative regulations to facilitate and promote uniform, reciprocal licensing with other states.

Section 263. KRS 235.310 is amended to read as follows:

- (1) The commissioner of the Department of Fish and Wildlife Resources shall designate officers and employees of the department to enforce the provisions of this chapter and these officers when duly authorized by the commissioner shall have the general powers of a peace officer for the enforcement of other offenses against the Commonwealth. In enforcing the provisions of this chapter, these officers and all other peace officers of the Commonwealth and its subdivisions shall have the right to enter upon all waters of this state, either private or public, for the purpose of inspecting certificate of registration and boat numbering, and shall have the right to enter upon all boats on such waters for the purpose of examining their registration documents and inspect their marine sanitation device to determine if it is the proper kind for the water body where the boat is kept or operated and that the device is properly operating. To conduct the marine sanitation device inspection the department officers and employees may require a motorboat owner to flush a dye through the marine toilet in the presence of the department officers or employees or use other appropriate measures to inspect the device. They may arrest on sight, without warrant, any person detected by them in the act of violating any of the provisions of this chapter. They shall have the same rights as sheriffs to require aid in arresting, with or without

process, any person found by them violating any of the provisions of this chapter or other offenses against the Commonwealth.

- (2) The officers designated in subsection (1) of this section shall be authorized to possess and use radio communication equipment capable of receiving and transmitting on state police radio frequency. The Department of **Kentucky** State Police shall cooperate with the department for the purpose of radio communication of these officers when any assistance is necessary.

Section 264. KRS 237.095 is amended to read as follows:

- (1) Upon receiving notice that a person barred from purchasing a firearm under 18 U.S.C. sec. 922(g)(8) has purchased or attempted to purchase a firearm, any agency with the responsibility of entering domestic violence records into the Law Information Network of Kentucky shall notify:
 - (a) The court in the jurisdiction where the domestic violence order was issued under KRS 403.750; and
 - (b) The law enforcement agencies, as designated by the **Department of** Kentucky State Police, that have jurisdiction in the county where the domestic violence order was issued and in the county of the victim's residence if different from the county where the domestic violence order was issued.
- (2) The **Department of** Kentucky State Police shall develop a protocol for providing notice to the required court and law enforcement agencies under subsection (1) of this section. Within the protocol, the **Department of** Kentucky State Police shall designate which local law enforcement agencies are to receive notice in each county. A minimum of one (1) law enforcement agency shall be designated in each county.
- (3) When a designated law enforcement agency for the county where the domestic violence order was issued or where the victim resides receives notice under subsection (1)(b) of this section, that agency shall make reasonable efforts to ensure that the petitioner who obtained the domestic violence order is notified that the respondent has purchased or attempted to purchase a firearm.
- (4) Any person carrying out responsibilities under this section shall be immune from civil liability for good faith conduct in carrying out those responsibilities.
- (5) This section shall apply only to domestic violence orders issued, or reissued, on or after July 14, 2000, through July 15, 2002.

Section 265. KRS 237.100 is amended to read as follows:

- (1) Upon receipt of notice that a person barred from purchasing a firearm under 18 U.S.C. sec. 922(g)(8) has purchased or attempted to purchase a firearm, the Justice **and Public Safety** Cabinet shall make a reasonable effort to provide notice to the petitioner who obtained the domestic violence order issued under KRS 403.750 that the respondent to the order has attempted to purchase a firearm. The Justice **and Public Safety** Cabinet may contract with a private entity in order to provide notification.
- (2) The notification shall be limited to a petitioner who has:
 - (a) Received a domestic violence protective order issued or reissued under KRS 403.750 on or after July 15, 2002;
 - (b) Received a domestic violence protective order that involves a respondent who is prohibited by 18 U.S.C. sec. 922(g)(8) from possessing a firearm; and
 - (c) Provided the Justice **and Public Safety** Cabinet or the entity with a request for notification.
- (3) Any person carrying out responsibilities under this section shall be immune from civil liability for good faith conduct in carrying out those responsibilities. Nothing in this subsection shall limit liability for negligence.

Section 266. KRS 237.110 is amended to read as follows:

- (1) The Department of **Kentucky** State Police is authorized to issue and renew licenses to carry concealed firearms or other deadly weapons, or a combination thereof, to persons qualified as provided in this section.
- (2) An original or renewal license issued pursuant to this section shall:

- (a) Be valid throughout the Commonwealth and, except as provided in this section or other specific section of the Kentucky Revised Statutes or federal law, permit the holder of the license to carry firearms, ammunition, or other deadly weapons, or a combination thereof, at any location in the Commonwealth;
 - (b) Unless revoked as provided by law, be valid for a period of five (5) years from the date of issuance;
 - (c) Authorize the holder of the license to carry a concealed firearm or other deadly weapon, or a combination thereof, on or about his or her person; and
 - (d) Authorize the holder of the license to carry ammunition for a firearm on or about his or her person.
- (3) Prior to the issuance of an original or renewal license to carry a concealed deadly weapon, the Department of **Kentucky** State Police shall conduct a background check to ascertain whether the applicant is eligible under 18 U.S.C. sec. 922(g) and (n), any other applicable federal law, and state law to purchase, receive, or possess a firearm or ammunition, or both. The background check shall include:
- (a) A state records check covering the items specified in this subsection, together with any other requirements of this section; and
 - (b) A federal records check, which shall include a National Instant Criminal Background Check System (NICS) check.
- (4) The Department of **Kentucky** State Police shall issue an original or renewal license if the applicant:
- (a) Is not prohibited from the purchase, receipt, or possession of firearms, ammunition, or both pursuant to 18 U.S.C. 922(g), 18 U.S.C. 922(n), or applicable state law; and
 - (b)
 - 1. Is a citizen of the United States who is a resident of this Commonwealth and has been a resident for six (6) months or longer immediately preceding the filing of the application; or
 - 2. Is a citizen of the United States who is a member of the Armed Forces of the United States who is on active duty, who is at the time of application assigned to a military posting in Kentucky, and who has been assigned to a posting in the Commonwealth for six (6) months or longer immediately preceding the filing of the application; and
 - (c) Is twenty-one (21) years of age or older; and
 - (d) Has not been committed to a state or federal facility for the abuse of a controlled substance, or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances, within a three (3) year period immediately preceding the date on which the application is submitted; and
 - (e) Does not chronically and habitually use alcoholic beverages as evidenced by the applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) years immediately preceding the date on which the application is submitted, or having been committed as an alcoholic pursuant to KRS Chapter 222 or similar laws of another state within the three (3) year period immediately preceding the date on which the application is submitted; and
 - (f) Does not owe a child support arrearage which equals or exceeds the cumulative amount which would be owed after one (1) year of nonpayment, if the Department of **Kentucky** State Police has been notified of the arrearage by the Cabinet for Health and Family Services; and
 - (g) Has complied with any subpoena or warrant relating to child support or paternity proceedings. If the Department of **Kentucky** State Police has not been notified by the Cabinet for Health and Family Services that the applicant has failed to meet this requirement, the Department of **Kentucky** State Police shall assume that paternity and child support proceedings are not an issue; and
 - (h) Has not been convicted of a violation of KRS 508.030 or 508.080 within the three (3) years immediately preceding the date on which the application is submitted. The commissioner of the Department of **Kentucky** State Police may waive this requirement upon good cause shown and a determination that the applicant is not a danger and that a waiver would not violate federal law; and
 - (i) Demonstrates competence with a firearm by successful completion of a firearms safety course offered or approved by the Department of Criminal Justice Training. The firearms safety course shall:
 - 1. Be not more than eight (8) hours in length;

2. Include instruction on handguns, the safe use of handguns, the care and cleaning of handguns, and handgun marksmanship principles;
 3. Include actual range firing of a handgun in a safe manner, and the firing of not more than twenty (20) rounds at a full-size silhouette target, during which firing, not less than eleven (11) rounds must hit the silhouette portion of the target; and
 4. Include information on and a copy of laws relating to possession and carrying of firearms, as set forth in KRS Chapters 237 and 527, and the laws relating to the use of force, as set forth in KRS Chapter 503.
- (5) A legible photocopy of the certificate of completion issued by the Department of Criminal Justice Training shall constitute evidence of qualification under subsection (4)(i) of this section.
- (6) (a) Peace officers who are currently certified as peace officers by the Kentucky Law Enforcement Council pursuant to KRS 15.380 to 15.404 and peace officers who are retired and are members of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System or other retirement system operated by or for a city, county, or urban-county in Kentucky shall be deemed to have met the training requirement.
- (b) Current and retired peace officers of the following federal agencies shall be deemed to have met the training requirement:
1. Any peace officer employed by a federal agency specified in KRS 61.365;
 2. Any peace officer employed by a federal civilian law enforcement agency not specified above who has successfully completed the basic law enforcement training course required by that agency;
 3. Any military peace officer of the United States Army, Navy, Marine Corps, or Air Force, or a reserve component thereof, or of the Army Reserve or Air Force Reserve who has successfully completed the military law enforcement training course required by that branch of the military; and
 4. Any member of the United States Coast Guard serving in a peace officer role who has successfully completed the law enforcement training course specified by the United States Coast Guard.
- (7) The application for a license, or renewal of a license, to carry a concealed deadly weapon shall be obtained from the office of the sheriff in the county in which the person resides. The completed application and all accompanying material plus an application fee or renewal fee, as appropriate, of sixty dollars (\$60) shall be presented to the office of the sheriff of the county in which the applicant resides. A full-time or part-time peace officer who is currently certified as a peace officer by the Kentucky Law Enforcement Council who is authorized by his or her employer or government authority to carry a concealed deadly weapon at all times and all locations within the Commonwealth pursuant to KRS 527.020 or a retired peace officer who is a member of the Kentucky Employees Retirement System, State Police Retirement System, County Employees Retirement System, or other retirement system operated by or for a city, county, or urban-county in Kentucky shall be exempt from paying the application or renewal fees. The sheriff shall transmit the application and accompanying material to the Department of **Kentucky** State Police within five (5) working days. Twenty dollars (\$20) of the application fee shall be retained by the office of the sheriff for official expenses of the office. Twenty dollars (\$20) shall be sent to the Department of **Kentucky** State Police with the application. Ten dollars (\$10) shall be transmitted by the sheriff to the Administrative Office of the Courts to fund background checks for youth leaders, and ten dollars (\$10) shall be transmitted to the Administrative Office of the Courts to fund background checks for applicants for concealed weapons. The application shall be completed, under oath, on a form promulgated by the Department of **Kentucky** State Police by administrative regulation which shall only include:
- (a) The name, address, place and date of birth, gender, and Social Security number of the applicant;
 - (b) A statement that, to the best of his **or her** knowledge, the applicant is in compliance with criteria contained within subsections (3) and (4) of this section;

- (c) A statement that the applicant has been furnished a copy of this section and is knowledgeable about its provisions;
 - (d) A statement that the applicant has been furnished a copy of, has read, and understands KRS Chapter 503 as it pertains to the use of deadly force for self-defense in Kentucky; and
 - (e) A conspicuous warning that the application is executed under oath and that a materially false answer to any question, or the submission of any materially false document by the applicant, subjects the applicant to criminal prosecution under KRS 523.030.
- (8) The applicant, if a resident of the Commonwealth, shall submit to the sheriff of the applicant's county of residence:
- (a) A completed application as described in subsection (7) of this section;
 - (b) A recent color photograph of the applicant, as prescribed by administrative regulation; and
 - (c) A photocopy of a certificate or an affidavit or document as described in subsection (5) of this section.
- (9) The Department of **Kentucky** State Police shall, within ninety (90) days after the date of receipt of the items listed in subsection (8) of this section, either:
- (a) Issue the license; or
 - (b) Deny the application based solely on the grounds that the applicant fails to qualify under the criteria listed in subsection (3) or (4) of this section. If the Department of **Kentucky** State Police denies the application, it shall notify the applicant in writing, stating the grounds for denial and informing the applicant of a right to submit, within thirty (30) days, any additional documentation relating to the grounds of denial. Upon receiving any additional documentation, the Department of **Kentucky** State Police shall reconsider its decision and inform the applicant within twenty (20) days of the result of the reconsideration. The applicant shall further be informed of the right to seek de novo review of the denial in the District Court of his **or her** place of residence within ninety (90) days from the date of the letter advising the applicant of the denial.
- (10) The Department of **Kentucky** State Police shall maintain an automated listing of license holders and pertinent information, and this information shall be available on-line, upon request, at all times to all Kentucky, federal, and other states' law enforcement agencies. A request for the entire list of licensees, or for all licensees in a geographic area, shall be denied. Only requests relating to a named licensee shall be honored or available on-line. Information on applications for licenses, names and addresses, or other identifying information relating to license holders shall be confidential and shall not be made available except to law enforcement agencies. No request for lists of local or statewide permit holders shall be made to any state or local law enforcement agency, peace officer, or other agency of government other than the Department of **Kentucky** State Police, and no state or local law enforcement agency, peace officer, or agency of government, other than the Department of **Kentucky** State Police, shall provide any information not entitled to it by law.
- (11) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after the loss, theft, or destruction of a license, the licensee shall notify the Department of **Kentucky** State Police of the loss, theft, or destruction. Failure to notify the Department of **Kentucky** State Police shall constitute a noncriminal violation with a penalty of twenty-five dollars (\$25) payable to the clerk of the District Court. No court costs shall be assessed for a violation of this subsection. When a licensee makes application to change his or her residence address or other information on the license, neither the sheriff nor the Department of **Kentucky** State Police shall require a surrender of the license until a new license is in the office of the applicable sheriff and available for issuance. Upon the issuance of a new license, the old license shall be destroyed by the sheriff.
- (12) If a license is lost, stolen, or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of fifteen dollars (\$15) to the Department of **Kentucky** State Police, obtain a duplicate, upon furnishing a notarized statement to the Department of **Kentucky** State Police that the license has been lost, stolen, or destroyed.
- (13) (a) The commissioner of the Department of **Kentucky** State Police, or his **or her** designee in writing, shall revoke the license of any person who becomes permanently ineligible to be issued a license or have a license renewed under the criteria set forth in this section.
- (b) The commissioner of the Department of **Kentucky** State Police, or his **or her** designee in writing, shall suspend the license of any person who becomes temporarily ineligible to be issued a license or have a

license renewed under the criteria set forth in this section. The license shall remain suspended until the person is again eligible for the issuance or renewal of a license.

- (c) Upon the suspension or revocation of a license, the commissioner of the Department of **Kentucky** State Police, or his *or her* designee in writing, shall:
 - 1. Order any peace officer to seize the license from the person whose license was suspended or revoked; or
 - 2. Direct the person whose license was suspended or revoked to surrender the license to the sheriff of the person's county of residence within two (2) business days of the receipt of the notice.
 - (d) If the person whose license was suspended or revoked desires a hearing on the matter, the person shall surrender the license as provided in paragraph (c)2. of this subsection and petition the commissioner of the Department of **Kentucky** State Police to hold a hearing on the issue of suspension or revocation of the license.
 - (e) Upon receipt of the petition, the commissioner of the Department of **Kentucky** State Police shall cause a hearing to be held in accordance with KRS Chapter 13B on the suspension or revocation of the license. If the license has not been surrendered, no hearing shall be scheduled or held.
 - (f) If the hearing officer determines that the licensee's license was wrongly suspended or revoked, the hearing officer shall order the commissioner of the Department of **Kentucky** State Police to return the license and abrogate the suspension or revocation of the license.
 - (g) Any party may appeal a decision pursuant to this subsection to the District Court in the licensee's county of residence in the same manner as for the denial of a license.
 - (h) If the license is not surrendered as ordered, the commissioner of the Department of **Kentucky** State Police shall order a peace officer to seize the license and deliver it to the commissioner.
 - (i) Failure to surrender a suspended or revoked license as ordered is a Class A misdemeanor.
 - (j) The provisions of this subsection relating to surrender of a license shall not apply if a court of competent jurisdiction has enjoined its surrender.
 - (k) When a domestic violence order or emergency protective order is issued pursuant to the provisions of KRS Chapter 403 against a person holding a license issued under this section, the holder of the permit shall surrender the license to the court or to the officer serving the order. The officer to whom the license is surrendered shall forthwith transmit the license to the court issuing the order. The license shall be suspended until the order is terminated, or until the judge who issued the order terminates the suspension prior to the termination of the underlying domestic violence order or emergency protective order, in writing and by return of the license, upon proper motion by the license holder. Subject to the same conditions as above, a peace officer against whom an emergency protective order or domestic violence order has been issued shall not be permitted to carry a concealed deadly weapon when not on duty, the provisions of KRS 527.020 to the contrary notwithstanding.
- (14) (a) Not less than one hundred twenty (120) days prior to the expiration date of the license, the Department of **Kentucky** State Police shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of **Kentucky** State Police. The outside of the envelope containing the license renewal notice shall bear only the name and address of the applicant. No other information relating to the applicant shall appear on the outside of the envelope sent to the applicant. The licensee may renew his *or her* license on or before the expiration date by filing with the sheriff of his *or her* county of residence the renewal form, a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (3) and (4) of this section, and the required renewal fee. The sheriff shall issue to the applicant a receipt for the application for renewal of the license and shall date the receipt.
- (b) A license which has expired shall be void and shall not be valid for any purpose other than surrender to the sheriff in exchange for a renewal license.
 - (c) The license shall be renewed to a qualified applicant upon receipt of the completed renewal application, records check as specified in subsection (3) of this section, determination that the renewal applicant is

not ineligible for a license as specified in subsection (4), and appropriate payment of fees. Upon the issuance of a new license, the old license shall be destroyed by the sheriff. A licensee who fails to file a renewal application on or before its expiration date may renew his *or her* license by paying, in addition to the license fees, a late fee of fifteen dollars (\$15). No license shall be renewed six (6) months or more after its expiration date, and the license shall be deemed to be permanently expired six (6) months after its expiration date. A person whose license has permanently expired may reapply for licensure pursuant to subsections (7), (8), and (9) of this section.

- (15) The licensee shall carry the license at all times the licensee is carrying a concealed firearm or other deadly weapon and shall display the license upon request of a law enforcement officer. Violation of the provisions of this subsection shall constitute a noncriminal violation with a penalty of twenty-five dollars (\$25), payable to the clerk of the District Court, but no court costs shall be assessed.
- (16) Except as provided in KRS 527.020, no license issued pursuant to this section shall authorize any person to carry a concealed firearm into:
 - (a) Any police station or sheriff's office;
 - (b) Any detention facility, prison, or jail;
 - (c) Any courthouse, solely occupied by the Court of Justice courtroom, or court proceeding;
 - (d) Any meeting of the governing body of a county, municipality, or special district; or any meeting of the General Assembly or a committee of the General Assembly, except that nothing in this section shall preclude a member of the body, holding a concealed deadly weapon license, from carrying a concealed deadly weapon at a meeting of the body of which he *or she* is a member;
 - (e) Any portion of an establishment licensed to dispense beer or alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to that purpose;
 - (f) Any elementary or secondary school facility without the consent of school authorities as provided in KRS 527.070, any child-caring facility as defined in KRS 199.011, any day-care center as defined in KRS 199.894, or any certified family child-care home as defined in KRS 199.8982, except however, any owner of a certified child-care home may carry a concealed firearm into the owner's residence used as a certified child-care home;
 - (g) An area of an airport to which access is controlled by the inspection of persons and property; or
 - (h) Any place where the carrying of firearms is prohibited by federal law.
- (17) The owner, business or commercial lessee, or manager of a private business enterprise, day-care center as defined in KRS 199.894 or certified or licensed family child-care home as defined in KRS 199.8982, or a health-care facility licensed under KRS Chapter 216B, except facilities renting or leasing housing, may prohibit persons holding concealed deadly weapon licenses from carrying concealed deadly weapons on the premises and may prohibit employees, not authorized by the employer, holding concealed deadly weapons licenses from carrying concealed deadly weapons on the property of the employer. If the building or the premises are open to the public, the employer or business enterprise shall post signs on or about the premises if carrying concealed weapons is prohibited. Possession of weapons, or ammunition, or both in a vehicle on the premises shall not be a criminal offense so long as the weapons, or ammunition, or both are not removed from the vehicle or brandished while the vehicle is on the premises. A private but not a public employer may prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons, or ammunition, or both in vehicles owned by the employer, but may not prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons, or ammunition, or both in vehicles owned by the employee, except that the Justice *and Public Safety* Cabinet may prohibit an employee from carrying any weapons, or ammunition, or both other than the weapons, or ammunition, or both issued or authorized to be used by the employee of the cabinet, in a vehicle while transporting persons under the employee's supervision or jurisdiction. Carrying of a concealed weapon, or ammunition, or both in a location specified in this subsection by a license holder shall not be a criminal act but may subject the person to denial from the premises or removal from the premises, and, if an employee of an employer, disciplinary measures by the employer.
- (18) All moneys collected by the Department of *Kentucky* State Police pursuant to this section shall be used to administer the provisions of this section and KRS 237.138 to 237.142. By March 1 of each year, the Department of *Kentucky* State Police and the Administrative Office of the Courts shall submit reports to the

Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the amounts of money collected and the expenditures related to this section, KRS 237.138 to 237.142, and KRS 237.115, 244.125, 527.020, and 527.070, and the administration of the provisions of this section, KRS 237.138 to 237.142, and KRS 237.115, 244.125, 527.020, and 527.070.

- (19) The General Assembly finds as a matter of public policy that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed firearms and to occupy the field of regulation of the bearing of concealed firearms to ensure that no person who qualifies under the provisions of this section is denied his rights. The General Assembly does not delegate to the Department of **Kentucky** State Police the authority to regulate or restrict the issuing of licenses provided for in this section beyond those provisions contained in this section. This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense.
- (20)
 - (a) A person who has a valid license issued by another state of the United States to carry a concealed deadly weapon in that state may, subject to provisions of Kentucky law, carry a concealed deadly weapon in Kentucky, and his *or her* license shall be considered as valid in Kentucky.
 - (b) The Department of **Kentucky** State Police shall, not later than thirty (30) days after July 15, 1998, and not less than once every six (6) months thereafter, make written inquiry of the concealed deadly weapon carrying licensing authorities in each other state as to whether a Kentucky resident may carry a concealed deadly weapon in their state based upon having a valid Kentucky concealed deadly weapon license, or whether a Kentucky resident may apply for a concealed deadly weapon carrying license in that state based upon having a valid Kentucky concealed deadly weapon license. The Department of **Kentucky** State Police shall attempt to secure from each other state permission for Kentucky residents who hold a valid Kentucky concealed deadly weapon license to carry concealed deadly weapons in that state, either on the basis of the Kentucky license or on the basis that the Kentucky license is sufficient to permit the issuance of a similar license by the other state. The Department of **Kentucky** State Police shall enter into a written reciprocity agreement with the appropriate agency in each state that agrees to permit Kentucky residents to carry concealed deadly weapons in the other state on the basis of a Kentucky-issued concealed deadly weapon license or that will issue a license to carry concealed deadly weapons in the other state based upon a Kentucky concealed deadly weapon license. If a reciprocity agreement is reached, the requirement to recontact the other state each six (6) months shall be eliminated as long as the reciprocity agreement is in force. The information shall be a public record and shall be available to individual requesters free of charge for the first copy and at the normal rate for open records requests for additional copies.
- (21) By March 1 of each year, the Department of **Kentucky** State Police shall submit a statistical report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the number of licenses issued, revoked, suspended, and denied since the previous report and in total and also the number of licenses currently valid. The report shall also include the number of arrests, convictions, and types of crimes committed since the previous report by individuals licensed to carry concealed weapons.
- (22) The following provisions shall apply to concealed deadly weapon training classes conducted by the Department of Criminal Justice Training or any other agency pursuant to this section:
 - (a) No concealed deadly weapon instructor trainer shall have his or her certification as a concealed deadly weapon instructor trainer reduced to that of instructor or revoked except after a hearing conducted pursuant to KRS Chapter 13B in which the instructor is found to have committed an act in violation of the applicable statutes or administrative regulations;
 - (b) No concealed deadly weapon instructor shall have his or her certification as a concealed deadly weapon instructor license suspended or revoked except after a hearing conducted pursuant to KRS Chapter 13B in which the instructor is found to have committed an act in violation of the applicable statutes or administrative regulations;
 - (c) The department shall not require prior notification that an applicant class or instructor class will be conducted by a certified instructor or instructor trainer;
 - (d) Each concealed deadly weapon instructor or instructor trainer who teaches a concealed deadly weapon applicant or concealed deadly weapon instructor class shall supply the Department of Criminal Justice Training with a class roster indicating which students enrolled and successfully completed the class, and

which contains the name and address of each student, within five (5) working days of the completion of the class. The information may be sent by mail, facsimile, e-mail, or other method which will result in the receipt of or production of a hard copy of the information. The postmark, facsimile date, or e-mail date shall be considered as the date on which the notice was sent. Concealed deadly weapon class applicant, instructor, and instructor trainer information and records shall be confidential. The department may release to any person or organization the name, address, and telephone number of a concealed deadly weapon instructor or instructor trainer if that instructor or instructor trainer authorizes the release of the information in writing. The department shall include on any application for an instructor or instructor trainer certification a statement that the applicant either does or does not desire the applicant's name, address, and telephone number to be made public;

- (e) An instructor trainer who assists in the conduct of a concealed deadly weapon instructor class or concealed deadly weapon applicant class for more than two (2) hours shall be considered as to have taught a class for the purpose of maintaining his or her certification. All class record forms shall include spaces for assistant instructors to sign and certify that they have assisted in the conduct of a concealed deadly weapon instructor or concealed deadly weapon class;
- (f) An instructor who assists in the conduct of a concealed deadly weapon applicant class for more than two (2) hours shall be considered as to have taught a class for the purpose of maintaining his or her license. All class record forms shall include spaces for assistant instructors to sign and certify that they have assisted in the conduct of a concealed deadly weapon class;
- (g) If the Department of Criminal Justice Training believes that a firearms instructor trainer or certified firearms instructor has not in fact complied with the requirements for teaching a certified firearms instructor or applicant class by not teaching the class as specified in KRS 237.126, or who has taught an insufficient class as specified in KRS 237.128, the department shall send to each person who has been listed as successfully completing the concealed deadly weapon applicant class or concealed deadly weapon instructor class a verification form on which the time, date, date of range firing if different from the date on which the class was conducted, location, and instructor of the class is listed by the department and which requires the person to answer "yes" or "no" to specific questions regarding the conduct of the training class. The form shall be completed under oath and shall be returned to the Department of Criminal Justice Training not later than forty-five (45) days after its receipt. A person who fails to complete the form, to sign the form, or to return the form to the Department of Criminal Justice Training within the time frame specified in this section or who, as a result of information on the returned form, is determined by the Department of Criminal Justice Training, following a hearing pursuant to KRS Chapter 13B, to not have received the training required by law shall have his or her concealed deadly weapon license revoked by the Department of **Kentucky** State Police, following a hearing conducted by the Department of Criminal Justice Training pursuant to KRS Chapter 13B, at which hearing the person is found to have violated the provisions of this section or who has been found not to have received the training required by law;
- (h) The department shall annually, not later than December 31 of each year, report to the Legislative Research Commission:
 - 1. The number of firearms instructor trainers and certified firearms instructors whose certifications were suspended, revoked, denied, or who were otherwise disciplined;
 - 2. The reasons for the imposition of suspensions, revocations, denials, or other discipline; and
 - 3. Suggestions for improvement of the concealed deadly weapon applicant training program and instructor process;
- (i) If a concealed deadly weapon license holder is convicted of, pleads guilty to, or enters an Alford plea to a felony offense, then his or her concealed deadly weapon license shall be forthwith revoked by the Department of **Kentucky** State Police as a matter of law;
- (j) If a concealed deadly weapon instructor or instructor trainer is convicted of, pleads guilty to, or enters an Alford plea to a felony offense, then his or her concealed deadly weapon instructor certification or concealed deadly weapon instructor trainer certification shall be revoked by the Department of Criminal Justice Training as a matter of law; and
- (k) The following shall be in effect:

1. Action to eliminate the firearms instructor trainer program is prohibited. The program shall remain in effect, and no firearms instructor trainer shall have his or her certification reduced to that of certified firearms instructor;
2. The **Department of** Kentucky State Police shall revoke the concealed deadly weapon license of any person who received no firearms training as required by KRS 237.126 and administrative regulations, or who received insufficient training as required by KRS 237.128 and administrative regulations, if the person voluntarily admits nonreceipt of training or admits receipt of insufficient training, or if either nonreceipt of training or receipt of insufficient training is proven following a hearing conducted by the Department of Criminal Justice Training pursuant to KRS Chapter 13B.

Section 267. KRS 237.130 is amended to read as follows:

- (1) A person is guilty of failure to report nonreceipt of firearms training when he or she receives certification that he or she has successfully completed a firearms instructor trainer, certified firearms instructor, or applicant training course and has not, in fact, received any such training and has not reported the matter in writing to the sheriff, Commonwealth's attorney, or county attorney serving the county in which the training was conducted or has not made a written report to the **Department of** Kentucky State Police and provided a copy of the certification documents to the agency reported to along with the report. The report shall be made not more than thirty (30) working days after receiving documentation of successful completion of training, unless a request for additional time has been made and has been granted by an officer or agency to which the report shall be made.
- (2) Failure to report nonreceipt of firearms training is a Class A misdemeanor.
- (3) A person who makes a report pursuant to this section within the time frame specified in subsection (1) of this section shall not be prosecuted for a violation of this section and shall be eligible to reenroll in the level of class for which they were originally enrolled.

Section 268. KRS 237.132 is amended to read as follows:

- (1) A person is guilty of failure to report insufficient firearms training when he or she receives certification that he or she has successfully completed a firearms instructor trainer, certified firearms instructor, or applicant training course and has not, in fact received lecture instruction, the showing of a required visual aid, hands-on firearm safety and cleaning training, range instruction and range firing, or has not successfully completed the marksmanship requirement during range firing and has not reported the matter in writing to the sheriff, Commonwealth's attorney, or county attorney serving the county in which the training was conducted or has not made a written report to the **Department of** Kentucky State Police and provided a copy of the certification documents to the agency reported to along with the report. The report shall be made not more than thirty (30) working days after receiving documentation of successful completion of training, unless additional time is requested and has been granted by an officer or agency to which a report shall be made.
- (2) Failure to report insufficient firearms training is a Class A misdemeanor.
- (3) A person who makes a report pursuant to this section within the time frame specified in subsection (1) of this section shall not be prosecuted for a violation of this section and shall be eligible to reenroll in the level of class for which the person was originally enrolled.

Section 269. KRS 237.134 is amended to read as follows:

- (1) When a report is made to the **Department of** Kentucky State Police pursuant to KRS 237.130 or 237.132, the **Department of** Kentucky State Police shall notify the Commonwealth's attorney and the county attorney for the county in which the training was conducted of the report and shall cooperate with them in the investigation and prosecution of the case.
- (2) When a report is made to a Commonwealth's or county attorney pursuant to KRS 237.130 or 237.132, the Commonwealth's or county attorney shall notify the **Department of** Kentucky State Police of the report and shall cooperate with them in the investigation and prosecution of the case.
- (3) When a report is made to the Department of Criminal Justice Training alleging a violation of KRS 237.130 or 237.132, the department shall notify the Commonwealth's attorney and county attorney of the county in which the training took place and shall make a notification of the report to the **Department of** Kentucky State Police.

- (4) The **Department of** Kentucky State Police shall make an annual report to the Legislative Research Commission, not later than December 31 of each year, detailing each notice received pursuant to this section detailing:
- (a) The name of the firearms instructor trainer or certified firearms instructor if that instructor trainer or instructor has been arrested or indicted as a result of the notification, otherwise the name shall be omitted;
 - (b) The precise allegation;
 - (c) Whether the allegation resulted in arrest or indictment;
 - (d) Whether the allegation resulted in a trial, and the results of that trial; and
 - (e) If the defendant was found guilty, the punishment imposed.
- (5) In or appended to the report specified in subsection (4) of this section the **Department of** Kentucky State Police shall report the number of arrests, indictments, trials, convictions, cases which were dismissed, and cases in which the defendant was found not guilty for failure to report nonreceipt of training and failure to report insufficient training.

Section 270. KRS 237.140 is amended to read as follows:

- (1)
 - (a) Certification for a retired peace officer to carry a concealed deadly weapon pursuant to KRS 237.138 to 237.142 shall be administered by the Department of **Kentucky** State Police.
 - (b) Costs of certification shall be paid for by moneys generated by the concealed deadly weapon license program under KRS 15.383 and collected by the Department of **Kentucky** State Police pursuant to that section.
 - (c) The Department of **Kentucky** State Police shall promulgate administrative regulations in accordance with KRS Chapter 13A necessary to implement the provisions of KRS 237.138 to 237.142.
- (2) Each retired peace officer who desires certification to carry a concealed deadly weapon shall annually submit:
 - (a) Evidence of retired status to the commissioner of **the Department of Kentucky** State Police together with all information required by federal law, this section, and administrative regulations promulgated pursuant to this section;
 - (b) Evidence of successful completion of firearms qualification required under this section; and
 - (c) A notarized statement that he or she is not prohibited by state or federal law from possessing a firearm.
- (3) Each law enforcement agency that employed the retired peace officer, or at which the retired peace officer served in an elected capacity, shall provide to the retired officer and the Department of **Kentucky** State Police the information required by federal law, this section, and the administrative regulations promulgated pursuant to this section in a prompt and efficient manner, without charge either to the Department of **Kentucky** State Police or the retiree.
- (4)
 - (a) Each retired peace officer shall annually fire twenty (20) rounds at an adult size silhouette target at a range of twenty-one (21) feet, with a handgun, and shall hit the target not less than eleven (11) times to obtain or maintain certification under KRS 237.138 to 237.142.
 - (b) The rounds fired pursuant to paragraph (a) of this subsection shall be done under the supervision of:
 - 1. A firearms instructor of the retiree's former employing agency;
 - 2. A Department of Criminal Justice Training certified police firearms instructor or instructor trainer; or
 - 3. A Department of Criminal Justice Training certified concealed carry instructor or instructor trainer.
 - (c) A firearms instructor may, if not compensated pursuant to paragraph (d) of this subsection, charge each participant a fee of not more than twenty dollars (\$20), which shall include the cost of the range, firearms instructor, range personnel, targets, and all other costs associated therewith, but not the cost of ammunition. Ammunition, or the cost of ammunition, shall be provided by the retiree.

- (d) A local or state law enforcement agency that desires to conduct firearms qualification for its retirees shall schedule not less than two (2) dates for firearms qualification per year, and those dates shall be approximately six (6) months apart. The local or state law enforcement agency may charge each participant a fee of not more than twenty dollars (\$20), which shall include the cost of use of the range, firearms instructor, range personnel, targets, and all other costs associated therewith, but not the cost of ammunition. Ammunition, or the cost of ammunition, shall be provided by the retiree.
- (e) No employer or appointing authority of a firearms instructor, Department of Criminal Justice Training certified police firearms instructor or instructor trainer, or Department of Criminal Justice Training certified concealed carry instructor or instructor trainer shall prohibit or in any way limit the instructor from qualifying active or retired peace officers in conformity with KRS 237.138 or 237.142 while that instructor is off duty. No employer or appointing authority of an instructor specified in this paragraph shall be liable in civil damages for the actions or omissions of the instructor during qualification of active or retired peace officers when that instructor is off duty.

Section 271. KRS 237.142 is amended to read as follows:

- (1) The following agencies of the Commonwealth shall make range facilities available not less than four (4) days per year for firearms qualification by retired peace officers seeking certification pursuant to the provisions of KRS 237.138 to 237.142:
 - (a) The Justice *and Public Safety* Cabinet;
 - (b) The Department of Military Affairs; and
 - (c) The Department of Fish and Wildlife Resources.
- (2) Firearms qualification may be conducted at any location, public or private, at which a handgun may be safely fired. The safety of the location at which firing takes place shall be the responsibility of the instructor conducting the qualification.

Section 272. KRS 238.525 is amended to read as follows:

- (1) Licenses shall be issued by the office on an annual or biennial basis, except as otherwise permitted in KRS 238.530 and 238.545. A license term may be determined by the office in any manner it deems appropriate to facilitate efficient licensing. The office shall charge a renewal fee not to exceed the maximum amounts established in KRS 238.530, 238.535, and 238.555.
- (2) The office may issue a temporary license to an applicant who has met the requirements for a license. A temporary license shall be valid from the date of issuance until the regular license is issued or for a period of sixty (60) days, whichever is shorter. A temporary license shall not be renewed, except for good cause and shall not exceed a total of nine (9) months in length.
- (3) An applicant for any license to be issued under KRS 238.530 and 238.555 shall be subjected to a state and national criminal history background check by the office, with the assistance of the *Department of* Kentucky State Police and the Federal Bureau of Investigation. An applicant for any license to be issued under KRS 238.535 shall be subjected to a state criminal history background check and may, if deemed reasonably necessary, be subjected to a national criminal history background check by the office with the assistance of the *Department of* Kentucky State Police and the Federal Bureau of Investigation. The criminal history background check shall apply to the chief executive officer and the chief financial officer or director of an applicant; any employee or member of an applicant who has been designated as chairperson of the charitable gaming activity; the applicant itself; and any individual with a ten percent (10%) or more financial interest in the applicant. The office shall require the fingerprinting of all applicants for licensure under KRS 238.530 and 238.555 and may require, if deemed reasonably necessary, the fingerprints of all applicants for licensure under KRS 238.535, who are natural persons in connection with the national criminal history background check to assure the identity of the applicant or applicants. The office may charge a reasonable fee not to exceed the actual cost of fingerprinting and records searching.
- (4) No applicant shall be licensed and no license holder shall be able to maintain a license if an individual associated with the applicant or license holder in a capacity listed in subsection (3) of this section or the applicant or license holder itself has been convicted of a felony, gambling offense, criminal fraud, forgery, theft, falsifying business records, violation of KRS 238.995(7), or any two (2) misdemeanor crimes in federal

court or the courts of any state, the District of Columbia, or any territory, consistent with the provisions of KRS Chapter 335B within ten (10) years preceding the application for licensure.

- (5) No applicant shall be licensed unless all applicants required to be fingerprinted under the provision of subsection (3) of this section have been fingerprinted. The **Department of** Kentucky State Police may submit fingerprints of any applicant to the Federal Bureau of Investigation for the national criminal history background check. The office may by administrative regulation impose additional qualifications to meet the requirements of Pub. L. 92-544.
- (6) If a change occurs in any information submitted during the license application process, the applicant or licensee shall notify the office in writing within thirty (30) days of the date the change occurred.

Section 273. KRS 244.190 is amended to read as follows:

Any peace officers, state administrators, and field representatives of the office may, upon probable cause, without warrant seize contraband regardless of whether it is in dry territory or not, and hold it subject to the order of the court before which the owner or one in possession of the contraband has been charged with violation of KRS Chapter 242 or KRS 243.020. Upon conviction of the defendant, the court shall enter an order for the destruction of all contraband property, except firearms or ammunition, included in subsections (1), (2), (3), (4), and (5) of KRS 244.180. Contraband firearms and ammunition shall be transferred to the **Department of** Kentucky State Police for disposition as provided in KRS 500.090.

Section 274. KRS 244.195 is amended to read as follows:

- (1) Title to contraband included in subsections (1), (2), (3), (4), and (5) of KRS 244.180 seized shall be vested in the appropriate court within whose jurisdiction the seizure occurred, irrespective of whether such contraband was seized by peace officers of the city or county or state administrators or field representatives of the office, notwithstanding the provisions of KRS 242.380.
- (2) The court shall order the sheriff for the county in which such contraband as included in subsection (1) of this section was seized to destroy such contraband, except firearms or ammunition, upon conviction of the defendant.
- (3) Contraband firearms and ammunition shall be transferred to the **Department of** Kentucky State Police for disposition as provided in KRS 500.090.

Section 275. KRS 247.150 is amended to read as follows:

The State Fair Board may arrange with the county judge/executive or the officer that has charge of the police force of any county or city in which the state fair is held, for the proper policing of the state fairgrounds, and may arrange with the state for the policing of the state fairgrounds by the **Department of Kentucky** State Police. The State Fair Board may arrange with the mayor or the officer that has charge of the police force of any county or city in which the exhibition center is located for the proper policing of the exhibition center, and may arrange with the state for the policing of the exhibition center by the **Department of Kentucky** State Police. If the State Fair Board is unable to arrange with a city, county or state authority for police protection, it may appoint, or may delegate to any agent or employee the power to appoint, subject to the approval of the State Fair Board, necessary special police to properly police the state fairgrounds and exhibition center. Such police officers are vested with the powers and charged with the duties of peace officers.

Section 276. KRS 248.764 is amended to read as follows:

- (1) KRS 248.752 and 248.754 shall be enforced by the Attorney General, but at the request of the Attorney General or the Attorney General's duly authorized agent, the **Department of Kentucky** State Police and all local police authorities shall enforce KRS 248.752 and 248.754. The Attorney General has concurrent powers with prosecuting attorneys of the Commonwealth to enforce KRS 248.754 or 248.756.
- (2) For the purpose of enforcing KRS 248.754 and 248.756, the Attorney General and any agency that the Attorney General shall have delegated enforcement responsibility under subsection (1) of this section may request information from any state or local agency and may share information with and request information from any federal agency and any agency of any other state or any local agency of that state.

Section 277. KRS 260.853 is amended to read as follows:

- (1) The Department of Agriculture shall promote the research and development of markets for Kentucky industrial hemp and hemp products after the selection and establishment of the industrial hemp research program and the

Industrial Hemp Commission, and provided that adequate funds are available for these purposes from the industrial hemp program fund. The department shall work cooperatively with selected Kentucky university or universities' agricultural research programs utilizing the expertise of the university or universities in the area of agricultural research.

- (2) The Council on Postsecondary Education shall select a university or universities where the industrial hemp research program is to be established, after proposals are considered from all interested universities with agriculture departments in Kentucky.
- (3) The selected institutions' industrial hemp research program shall undertake research of industrial hemp production in the state. The department shall assist the industrial hemp research program in obtaining the necessary federal permits from the United States Drug Enforcement Agency or appropriate federal agency. In undertaking the industrial hemp research program, the university or universities are authorized to:
 - (a) Grow industrial hemp to conduct agronomy research and analysis of required soils, growing conditions, and harvest methods relating to the production of industrial hemp for commercial products, including, but not limited to, hemp seed, paper, clothing, and oils;
 - (b) Conduct seed research on various types of industrial hemp that are best suited to be grown in Kentucky, including but not limited to seed availability, creation of Kentucky hybrid types, in-the-ground variety trials and seed production;
 - (c) Study the economic feasibility of developing an industrial hemp market in various types of industrial hemp that can be grown in the Commonwealth;
 - (d) Report on the estimated value-added benefits, including environmental benefits, that Kentucky businesses would reap by having an industrial hemp market of Kentucky-grown industrial hemp varieties in the Commonwealth;
 - (e) Study the agronomy research being conducted worldwide relating to industrial hemp varieties, production, and utilization;
 - (f) Research and promote Kentucky industrial hemp and hemp seed on the world market that can be grown on farms in the Commonwealth; and
 - (g) Study the feasibility of attracting private funding for the Kentucky industrial hemp research program.
- (4) The authorization granted in subsection (3) of this section shall not subject the industrial hemp research program or the selected university or universities where it is located to any criminal liability under the controlled substances laws of the Commonwealth. This exemption from criminal liability is a limited exemption that shall be strictly construed and that shall not apply to any activities of the industrial hemp research program or the selected university or universities that are not expressly permitted in the authorization.
- (5) The authorization granted in subsection (3) of this section shall not alter, amend, or repeal by implication any provision of the Kentucky Revised Statutes relating to controlled substances.
- (6) The selected university or universities of the industrial hemp research program shall notify the headquarters of the Department of *Kentucky* State Police, the local barracks of the *Department of* Kentucky State Police, and all other local law enforcement agencies of the duration, size, and location of all industrial hemp plots.
- (7) The Commissioner and the university or universities may cooperatively seek funds from both public and private sources to implement this section. The funds shall be deposited into the industrial hemp program fund.
- (8) By October 1, 2001, and annually thereafter, the university or universities shall report on the status and progress of the industrial hemp research program authorized by this section to the Commissioner, the Industrial Hemp Commission, and the Interim Joint Committee on Agriculture and Natural Resources.

Section 278. KRS 260.857 is amended to read as follows:

The Kentucky Industrial Hemp Commission is created and is attached to the Department of Agriculture for administrative purposes. The membership of the commission shall consist of at least seventeen (17) members as follows:

- (1) The Speaker of the House of Representatives or the Speaker's designee;

- (2) The President of the Senate or the President's designee;
- (3) The chair of the Senate Agriculture and Natural Resources Committee;
- (4) The chair of the House Agriculture and Small Business Committee;
- (5) The Commissioner of the Department of Agriculture or the Commissioner's designee;
- (6) The commissioner of the Department of *Kentucky* State Police or the commissioner's designee;
- (7) The executive director of the Governor's Office of Agricultural Policy or the executive director's designee;
- (8) The chairs of the agriculture departments at the Kentucky university or universities where the industrial hemp research program is to be established;
- (9) The president of the Kentucky Hemp Growers Cooperative Association;
- (10) The president of the Kentucky Sheriffs' Association;
- (11) The president of the Kentucky Association of Chiefs of Police; and
- (12) Six (6) members, three (3) appointed by the Speaker of the House and three (3) by the President of the Senate, representing the following interests:
 - (a) Kentucky farmers with an interest in growing industrial hemp;
 - (b) Retailers of industrial hemp products;
 - (c) Wholesalers of industrial hemp products; and
 - (d) Manufacturers of industrial hemp products.

Section 279. KRS 281.755 is amended to read as follows:

- (1) ~~The commissioner and representatives of the~~ Department of *Kentucky* State Police *and the Department of Kentucky Vehicle Enforcement* may at any time or place make an inspection of any motor vehicle operating under the provisions of this chapter. They may enter into and upon any such motor vehicle for the purpose of ascertaining whether or not any provision of this chapter or any order or rule or regulation of the department relating to such motor vehicles has been violated. Willful refusal to stop any such motor vehicle, when ordered to do so by any representative of the Department *of Kentucky State Police or the Department of Kentucky Vehicle Enforcement*, or to permit the representative to enter into or upon the motor vehicle for the purpose of inspection, shall be sufficient ground for the revocation or suspension of the certificate or permit of the motor carrier.
- (2) In the event that a peace officer orders a commercial motor vehicle to be taken to a storage or impoundment facility as a result of a violation which requires the vehicle to be moved, the driver of the commercial motor vehicle shall be granted the ability to drive the commercial motor vehicle to the storage or impoundment facility. If the driver elects to drive to the storage or impoundment facility, a peace officer shall escort the vehicle to the facility. This subsection shall not apply if the commercial motor vehicle is required to be impounded as a result of a violation of KRS 281A.210, an out-of-service order as defined in KRS 281A.010(26), or a serious traffic violation as defined in KRS 281A.010(29).

Section 280. KRS 281.757 is amended to read as follows:

- (1) As used in this section:
 - (a) "Lights" means the lighting devices required on commercial vehicles having a declared gross weight in excess of ten thousand (10,000) pounds in accordance with 49 C.F.R. Part 393 and 49 C.F.R. Part 571; and
 - (b) "Reflectors" means the reflex reflectors and retroreflective sheeting required on commercial vehicles having a declared gross weight in excess of ten thousand (10,000) pounds in accordance with 49 C.F.R. Part 393.
- (2) A person shall not operate a commercial motor vehicle if the lights or reflectors are inoperable, missing, or are obscured by dirt, mud, or other debris.
- (3) Law enforcement officers ~~and the Transportation Cabinet~~ shall enforce violations of this section.

Section 281. KRS 281.770 is repealed, reenacted as a new section of KRS Chapter 15A, and amended to read as follows:

- (1) *The Department of Kentucky Vehicle Enforcement is hereby created as a separate department within the Justice and Public Safety Cabinet.*
- (2) *The department shall be headed by a commissioner who shall report directly to the Secretary of the Justice and Public Safety Cabinet. The commissioner may commission employees of the department as peace officers for the purpose of enforcing the provisions of KRS Chapter 281. The Department of Kentucky Vehicle Enforcement shall also have the authority to enforce all other state laws and administrative regulations as directed by the Governor or secretary of the Justice and Public Safety Cabinet. Peace officers of the department shall also enforce vehicle licensure, and motor vehicle operator, traffic, and criminal law violations on a highway. Additional jurisdiction may be established by agreement with the chief of police of the municipality or sheriff of the county or the appropriate law enforcement agency in which such highway is located, dependent upon the jurisdiction involved.*
- (3) *Officers of the department may exercise their powers away from the locations described in subsection (2) of this section only upon the following conditions:*
 - (a) *When in hot pursuit of an actual or suspected violator of the law;*
 - (b) *When authorized to do so pursuant to the agreement authorized by subsection (2) of this section;*
 - (c) *When requested to act by the chief of police of the city or county in which the highway is located;*
 - (d) *When requested to act by the sheriff of the county in which the highway is located;*
 - (e) *When requested to act by the commissioner of the Department of Kentucky State Police;*
 - (f) *When requested to act by the authorized delegates of those persons or agencies listed in paragraphs (c), (d), or (e) of this subsection;*
 - (g) *When requested to assist a state, county, or municipal police officer, sheriff, or other peace officer in the performance of his lawful duties, or if it appears that the peace officer is unable to request emergency assistance and the circumstances observed by the officer reasonably indicate that emergency assistance is appropriate;*
 - (h) *When necessary to protect the life or property of the officer or another person from imminent threat of physical harm; or*
 - (i) *When operating under an interlocal cooperation agreement pursuant to KRS Chapter 65.*
- (4) *Officers commissioned by the department shall have, in addition to the other powers enumerated in this section, the power to conduct investigations anywhere in this Commonwealth, provided such investigation relates to criminal offenses or violations which occurred on a highway. Where desirable and at the discretion of the commissioner or his or her designee, the department may coordinate these investigations with any law enforcement agency of this Commonwealth or with agencies of the federal government.*
- (5) *An officer of the department that renders any assistance pursuant to subsection (3) of this section shall be considered performing regular employment for the purpose of compensation, pension, workers' compensation, and other rights and benefits to which the officer may be entitled as incident to regular employment.*
- (6) *Nothing in this section shall be construed as a diminution or modification of the authority or responsibility of any city or county police department, the Department of Kentucky State Police, a sheriff, a constable, or other peace officer on a highway in their jurisdiction or otherwise.*
- (7) *The primary responsibility of the department shall be the enforcement of federal, state, and local motor carrier, and for-hire carrier laws, administrative regulations, and ordinances.*
- (8) *The Department of Kentucky Vehicle Enforcement shall have the following divisions:*
 - (a) *Division of Field Operations East;*
 - (b) *Division of Field Operations West;*
 - (c) *Division of Special Operations; and*

(d) ***Division of Administrative Services***~~[The commissioner, Department of State Police, is hereby authorized to issue commissions to employees of the department as law enforcement officers, and such employees when so commissioned shall have all the powers of peace officers in respect to the enforcement of this chapter and all the statutes and regulations relating to motor vehicles operated as private or for hire carriers.]~~

~~(2) Peace officers commissioned as provided herein may be assigned additional duties in enforcing other provisions of law for specified limits of time during an emergency or time of special needs as determined by the commissioner in his discretion.~~

Section 282. KRS 281.771 is repealed, reenacted as a new section of KRS Chapter 15A, and amended to read as follows:

- (1) For the purposes of this section, the term "commissioner" means the commissioner of the Department of ~~Kentucky~~~~Motor~~ Vehicle ***Enforcement***~~[Regulation]~~.
- (2) An employee commissioned pursuant to the provisions of ***Section 281 of this Act***~~[KRS 281.770]~~ shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (3) Any person may prefer charges against a commissioned employee.
- (4) A charge shall be:
 - (a) In writing;
 - (b) Filed with the office of the commissioner;
 - (c) Signed by the person making the complaint; and
 - (d) Set out with clarity and distinction.
- (5)
 - (a) The commissioner shall review the charges.
 - (b) If the commissioner determines that there is probable cause, he shall file charges against a commissioned employee whom he believes is guilty of misconduct that justifies his removal or discipline.
- (6) Within five (5) days of the filing of the charges, the commissioner shall:
 - (a) Personally deliver a copy of the charges to the commissioned employee; or
 - (b) Send a copy of the charges to the commissioned employee by certified mail, return receipt requested.
- (7) Within five (5) days of receipt of the charges, the commissioned employee may:
 - (a) Demand an administrative hearing; or
 - (b) Admit the truth of the charges in whole or in part.
- (8) If the commissioned employee admits the truthfulness of the charges, the commissioner shall dismiss, demote, suspend, or otherwise penalize the employee as warranted by the seriousness of the charges.
- (9) If the commissioned employee denies the charges and demands a hearing within the time specified in subsection (7) of this section, he shall notify the commissioner in writing.
- (10) Upon receipt of the demand for hearing, the commissioner shall arrange for an administrative hearing before a trial board to be constituted as provided in ***Section 283 of this Act***~~[KRS 281.772]~~. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (11)
 - (a) If the commissioner has probable cause to believe that a commissioned employee is guilty of misconduct, he may immediately suspend the employee from duty, or from both pay and duty, pending trial.
 - (b) If an employee is suspended, he shall not be returned to duty or be paid until a final order is rendered by the trial board.
- (12) After hearing the charges, the trial board shall fix the punishment of a commissioned employee found guilty of one (1) or more charges, by:
 - (a) Reprimand;

- (b) Suspension for a period not to exceed six (6) months;
- (c) Reducing the grade if the commissioned employee's classification warrants it;
- (d) Combining any two (2) or more of the punishments;
- (e) Reducing the monthly salary of the commissioned employee by not more than twenty percent (20%) for not more than six (6) months; or
- (f) Dismissing him from the service of the department.

Section 283. KRS 281.772 is repealed, reenacted as a new section of KRS Chapter 15A, and amended to read as follows:

- (1) For the purpose of hearing charges against any commissioned employee, there is created a trial board, which shall consist of the commissioner *of the Department of Kentucky Vehicle Enforcement* and a panel of ten (10) commissioned employees appointed by the commissioner. The commissioner shall designate from the panel not less than three (3) nor more than seven (7) members to hear charges against any commissioned employee. Hearings before the trial board shall be conducted in accordance with KRS Chapter 13B.
- (2) The commissioned employees appointed to the trial board shall:
 - (a) Fulfill the duties of the board in addition to their other duties; and
 - (b) Be reimbursed for travel and necessary expenses pursuant to the provisions of KRS 18A.200.
- (3)
 - (a) A defendant may, for cause, challenge the right of any member of the trial board to hear charges against him.
 - (b) If the other members of the trial board determine that the challenge is justifiable, the trial board member in question shall be:
 - 1. Excused from hearing the charges, and
 - 2. Replaced by another member of the trial board.
- (4) The rights conferred upon a commissioned employee by this section shall not accrue until he has been employed for a period of one (1) year.
- (5) No commissioned employee is entitled to a hearing as provided in this section unless his suspension is for more than twenty (20) days, or his pay is reduced more than ten percent (10%); but if the employee receives more than twenty (20) days suspension or a reduction in salary of more than ten percent (10%) within a period of one (1) year, he shall have the right to a hearing.
- (6) The dismissal, demotion, suspension, or other penalization of a noncommissioned employee shall comply with the provisions of KRS 18A.095 and 18A.100.
- (7) Any commissioned employee found guilty by the trial board of any charge under the provisions of *Section 282 of this Act* ~~KRS 281.771~~ shall have the right to appeal to Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 284. KRS 281.880 is amended to read as follows:

- (1) The Department *of Vehicle Regulation in the Transportation Cabinet* shall establish a motor carrier safety management audit program applicable to private or for-hire, intrastate or interstate motor carriers. The Department *of Kentucky Vehicle Enforcement* may perform safety inspections on vehicles operated by a motor carrier on public highways and may enter onto property owned, leased, controlled, or operated by a motor carrier to inspect any of its vehicles or inspect or copy records relating to vehicle safety, maintenance, or financial responsibility.
- (2) The department may issue motor carrier safety ratings to any private or for-hire motor carrier which is based in Kentucky, has a terminal in Kentucky, or operates consistently in Kentucky. The safety rating scale and factors determining a carrier's safety rating shall be established by administrative regulation and shall be compatible with the scale and factors established by the Federal Highway Administration in Title 49 of the United States Code of Federal Regulations, Part 385, relating to safety ratings, in effect as of July 13, 1990, or as amended after that date.

- (3) The department may determine the safety fitness of a motor carrier and may require the maintenance of or upgrade to a satisfactory safety rating.

Section 285. KRS 281A.010 is amended to read as follows:

- (1) "Alcohol" means:
- (a) Beer, ale, port, or stout and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percentum (0.5%) or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;
 - (b) Wine of not less than one-half of one percentum (0.5%) of alcohol by volume; or
 - (c) Distilled spirits, which means that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced; or
 - (d) Any substance containing ethyl alcohol, hydrated oxide of ethyl, spirit of wine, or any distilled spirits including, but not limited to, ethanol, methanol, propanol, and isopropanol.
- (2) "Alcohol concentration" means:
- (a) The number of grams of alcohol per one hundred (100) milliliters of blood;
 - (b) The number of grams of alcohol per two hundred ten (210) liters of breath; or
 - (c) The number of grams of alcohol per sixty-seven (67) milliliters of urine.
- (3) "Cabinet" means the Transportation Cabinet of the Commonwealth of Kentucky.
- (4) "Commerce" means:
- (a) Any trade, traffic, or transportation within the jurisdiction of the United States between a place in a state and a place outside of the state, including a place outside of the United States; and
 - (b) Trade, traffic, and transportation in the United States that affects any trade, traffic, and transportation described in paragraph (a) of this subsection.
- (5) "Commercial driver's license," or CDL, means a license issued to an individual in accordance with the requirements of this chapter or, if the license is issued by another state in accordance with the Federal Commercial Motor Vehicle Safety Act, to an individual that authorizes the individual to drive any class of commercial motor vehicle.
- (6) "Commercial driver's license information system" or CDLIS means the national information system established to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.
- (7) "Commercial driver's instruction permit" means a permit issued pursuant to KRS 281A.120.
- (8) "Commercial motor vehicle," or CMV, means a motor vehicle or combination motor vehicle used in commerce that is:
- (a) Designed to carry property and has a gross vehicle weight rating as determined by federal regulation which has been adopted into cabinet administrative regulations pursuant to KRS Chapter 13A;
 - (b) Designed to transport sixteen (16) or more passengers, including the driver;
 - (c) Transporting hazardous materials and is required to be placarded in accordance with Title 49, Code of Federal Regulations, Part 172; or
 - (d) Any other vehicle that is required by cabinet administrative regulation, pursuant to KRS Chapter 13A, to be operated by a licensed commercial driver.
- (9) "Controlled substance" means any substance so classified under Section 102(6) of the Controlled Substances Act, 21 U.S.C. sec. 802(6), and includes all substances listed on Schedules I through V, of Title 21, Code of Federal Regulations, Part 1308, as adopted by the Transportation Cabinet by administrative regulation pursuant to KRS Chapter 13A. It shall also include those substances defined or listed in KRS Chapter 218A.
- (10) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated

forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or Alford plea entered and accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

- (11) "Disqualification" means any of the following actions:
 - (a) The suspension, revocation, or cancellation of a CDL by the Commonwealth or the jurisdiction of issuance;
 - (b) Any withdrawal of a person's privilege to drive a commercial motor vehicle by the Commonwealth or another jurisdiction as a result of a violation of state or local law relating to motor vehicle traffic control, other than parking, vehicle weight, or vehicle defect violations; or
 - (c) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. pt. 391.
- (12) "Drive" means to drive, operate, or be in physical control of a motor vehicle.
- (13) "Driver" means any person who drives, operates, or is in physical control of a commercial motor vehicle, or who is required to hold a commercial driver's license.
- (14) "Driver's license" means a license issued by a state to an individual that authorizes the individual to drive a motor vehicle.
- (15) "Employee" means any operator of a commercial motor vehicle, including full-time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers and independent, owner-operator contractors while in the course of operating a commercial motor vehicle who are either directly employed by, under lease to, or operating in a manner indicating employment to an employer.
- (16) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.
- (17) "Felony" means any offense under state or federal law that is punishable by death or imprisonment for a term exceeding one (1) year.
- (18) "Gross combination weight rating," or GCWR, is the gross vehicle weight rating of power unit plus the gross vehicle weight rating of any towed unit. In the absence of a value specified by the manufacturer, GCWR shall be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit and load therein.
- (19) "Gross vehicle weight rating," or GVWR, means the value specified by the manufacturer as the maximum loaded weight of a single, a combination or an articulated vehicle.
- (20) "Hazardous materials" means the definition found in Section 103 of the Hazardous Materials Transportation Law, 49 U.S.C. sec. 5101 et seq.
- (21) "Highway" shall include any way or place of any nature when any part of it is open to the use of the public as a matter of right, license, or privilege for the use of vehicular traffic.
- (22) "Imminent hazard" means a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a danger to health, property, or the environment exists.
- (23) "Moped" shall have the same meaning as in KRS 186.010(5).
- (24) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but shall not include any vehicle, machine, tractor, trailer, or semitrailers operated exclusively on a rail.
- (25) "NDR" means the national driver register.
- (26) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 C.F.R. sec. 386.72, 392.5, 395.13, or 396.9; comparable laws or regulations; or the North American Uniform Out-of-Service Criteria.

- (27) "Resident" means a person who has established Kentucky as his or her state of domicile. Proof of residency shall include but not be limited to a deed or property tax bill, utility agreement or utility bill, or rental housing agreement.
- (28) "School bus" means a vehicle that meets the specification of KRS 156.153 used to transport preprimary, primary, or secondary school students between school and home, or to and from school-sponsored events. A school bus shall not include a bus used as a common carrier.
- (29) "Serious traffic violation" means a conviction when operating a commercial motor vehicle of:
- (a) Excessive speeding, involving a single charge of any speed fifteen (15) miles per hour or more, above the specified speed limit;
 - (b) Reckless driving, as defined under state or local law, including conviction of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;
 - (c) Improper or erratic traffic lane changes;
 - (d) Following the vehicle ahead too closely;
 - (e) A violation of any state or local law related to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident;
 - (f) Driving a commercial motor vehicle without a CDL;
 - (g) Driving a commercial motor vehicle without a CDL in one's possession or refusing to display a CDL upon request;
 - (h) Driving a commercial motor vehicle without the proper class of CDL or endorsements, or both, for the specific vehicle type or types being operated or for the passengers or type or types of cargo being transported; or
 - (i) Any conviction of an offense that requires mandatory suspension under KRS 186.560 or a serious violation as defined by Title 49 of the Code of Federal Regulations Part 383 or as amended by the Federal Highway Administration.
- (30) "State" means a state of the United States and the District of Columbia.
- (31) "State police" means the Department of **Kentucky** State Police~~[of the Commonwealth of Kentucky]~~.

Section 286. KRS 281A.090 is amended to read as follows:

- (1) Except when driving under a commercial driver's instruction permit and accompanied by the holder of commercial driver's license valid for the vehicle being driven, no person shall drive a commercial motor vehicle on the highways of this state unless the person holds a valid commercial driver's license with applicable endorsements valid for the vehicle he **or she** is driving.
- (2) No person shall drive a commercial motor vehicle on the highways of this state while his **or her** driving privilege for a commercial or noncommercial motor vehicle is suspended, revoked, or canceled, or while he **or she** is subject to a disqualification, or in violation of an out-of-service order.
- (3) The licensee shall have in his **or her** immediate possession at all times when operating a motor vehicle his **or her** commercial driver's license, and shall display the license upon demand to a circuit clerk, a license examiner, a peace officer, a State Police officer, or an inspector or officer of the Department of Vehicle Regulation **or the Department of Kentucky Vehicle Enforcement**. It shall be a defense to a violator of this subsection if the person so charged produces in court a commercial driver's license, issued to him **or her** before his **or her** arrest or violation and which was valid at that time.

Section 287. KRS 281A.150 is amended to read as follows:

- (1) Every person seeking a commercial driver's license or a commercial driver's instruction permit shall first apply in person to the circuit clerk of the county in which the applicant resides or in the county where the person is enrolled in a driver training school if the applicant is not a resident. The application shall be in the form prescribed by KRS 281A.140 as provided by the cabinet. Except as provided in KRS 281A.160(6), each time a person applies for a commercial driver's license, an instruction permit, or seeks to upgrade or change his **or her** commercial driver's license, the person shall be required to:
 - (a) Update the application; and

- (b) Submit the appropriate fee to the circuit clerk.
- (2) The cabinet shall set fees by administrative regulation, pursuant to KRS Chapter 13A, for the following applications that shall not exceed:
 - (a) Forty dollars (\$40) for each application for a commercial driver's license. The fee shall be based on the class, type of license, endorsement, restriction, or tests to be taken;
 - (b) Thirty-five dollars (\$35) for each application for a commercial driver's instruction permit;
 - (c) Fifteen dollars (\$15) for each application for a change or addition in class or type of license, endorsement, or restriction;
 - (d) Forty dollars (\$40) for each application for a duplicate if it is the first duplicate applied for within the time period for which the original license was issued. Sixty dollars (\$60) for a second or subsequent duplicate applied for within the time period for which the original license was issued. The fees required for a duplicate shall be in addition to fees charged under subsection (2)(c) of this section;
 - (e) Thirty-five dollars (\$35) for each application for renewal of a commercial driver's license;
 - (f) Sixty dollars (\$60) for each application for a transfer of a commercial driver's license; and
 - (g) Twenty dollars (\$20) for each application for a commercial driver's license with an "S" restriction for the following persons:
 - 1. A person who operates a school bus;
 - 2. A person who is employed by a mass transit authority created under the provisions of KRS Chapter 96A;
 - 3. A person who drives a vehicle that is operated under a nonprofit bus certificate established pursuant to KRS 281.619;
 - 4. A person who drives a vehicle registered pursuant to KRS 186.050(6); or
 - 5. A person who drives a fixed route bus system vehicle that is operated by a public entity pursuant to the provisions of KRS Chapter 281.
- (3) All fees remitted to the clerk shall be nonrefundable regardless of whether the applicant completes the requirements for a commercial driver's license or is tested.
- (4) All fees collected for the issuance of a commercial driver's license or a commercial driver's instruction permit shall be deposited into trust and agency accounts to be used exclusively for the administration and implementation of this chapter, except as prescribed in subsection (5) of this section. The accounts shall not lapse but shall be continuing from year to year.
- (5) All fees collected pursuant to this section, shall be allocated between the Transportation Cabinet and Department of *Kentucky* State Police, except a fifty cent (\$0.50) issuance fee shall be allocated during the first two (2) years following the effective date of January 1, 1991, to the Administrative Office of the Courts in a trust and agency account for the use of the circuit clerks and thereafter allocated to the general fund from issuance of a commercial driver's license permit. A three dollar (\$3) issuance fee shall be allocated during the first two (2) years following the effective date of January 1, 1991, to the Administrative Office of the Courts in a trust and agency account for the use of the circuit clerks and thereafter allocated to the general fund from issuance of a commercial driver's license.
- (6) Any applicant who seeks reinstatement of his *or her* commercial driving privilege after a suspension, withdrawal, revocation, or disqualification shall pay a reinstatement fee of fifty dollars (\$50) in addition to those fees required by subsection (2) of this section and shall satisfy the requirements of KRS 281A.160. This fee shall not be required if his *or her* commercial driving privilege was withdrawn only as a result of the withdrawal of his *or her* privilege to drive a noncommercial motor vehicle.

Section 288. KRS 281A.160 is amended to read as follows:

- (1) (a) Except as provided in subsection (4) of this section, the State Police shall be responsible for administering both the knowledge and skills test required by KRS 281A.130.

- (b) Applicants who fail the written knowledge test shall be permitted to retake the written test on the next day the tests are administered. Applicants who fail the written test six (6) times shall be required to wait three (3) days before taking the knowledge test again. Applicants who subsequently fail the written test three (3) additional times shall be required to wait three (3) days prior to retaking the test.
- (2) (a) Except as provided for in subsection (3) of this section, at the time a CDL permit is issued:
 - 1. An applicant who has held a Kentucky operator's license for thirty (30) days or longer shall pay a skills-testing fee of fifty dollars (\$50); and
 - 2. An applicant who has held a Kentucky operator's license for less than thirty (30) days shall pay a skills-testing fee of one hundred fifty dollars (\$150).
- (b) There is created within the State Treasury a trust fund to be known as the State Police CDL skills-testing fund. The fund shall be administered by the State Police and shall receive all skills-testing and retesting fees collected under subsections (2)(a) and (6)(c) of this section, in addition to any grants, gifts, or appropriations of state or federal moneys and any interest earned on moneys in the fund. Moneys in the fund shall not lapse and shall be carried forward to the next succeeding fiscal year. The State Police CDL skills-testing fund shall be used by the State Police to contract with and train civilian CDL skills examiners and to improve the logistics of the CDL skills-testing process.
- (c) The State Police, upon request of an applicant who has passed both the vision and knowledge tests, may schedule the applicant for the skills test at the first available test date at a test site designated by the State Police but not less than ten (10) days after the applicant has filed the application and been issued a CDL permit. Except in extenuating circumstances, a retest for a failed portion of the skills test shall be given within three (3) days of a request of a retest.
- (d) An applicant shall provide a class representative commercial vehicle, for the class of CDL for which the applicant is testing, in which to take the skills test. Unless the State Police grant an exemption at the time the application for testing is made, the vehicle supplied under this paragraph shall be unloaded. Upon arrival for the skills test, the applicant shall have in his or her possession a valid Kentucky operator's license, a valid CDL permit, and a current U.S. Department of Transportation physical card. A CDL-licensed driver who is at least twenty-one (21) years old shall accompany the applicant at all times the applicant is in operation of a commercial vehicle.
- (3) A testing fee shall not be charged to an individual applying for a CDL with an "S" restriction as defined in KRS 281A.170.
- (4) The State Police may authorize a third party to administer the skills test specified by this section if:
 - (a) The test is the same that would otherwise be administered by the state; and
 - (b) The third party has entered into an agreement with this Commonwealth which complies with requirements of Title 49, Code of Federal Regulations, Part 383.75, as adopted by the Transportation Cabinet.
- (5) The State Police shall promulgate administrative regulations under KRS Chapter 13A that establish procedures that ensure an arm's-length relationship is maintained between a third-party tester and any owner, officer, or employee of any program offering commercial truck driving under the Kentucky Community and Technical College System or a proprietary school licensed under KRS Chapter 165A.
- (6) (a) Applicants shall be permitted to take the skills test for a particular class vehicle an unlimited number of times; however, an applicant shall not retest more than one (1) time in any twenty-four (24) hour period.
- (b) The skills test shall consist of three (3) separate portions: pre-trip inspection, basic maneuvering, and road skills. An applicant must achieve a score of at least eighty percent (80%) on each portion of the skills test before a CDL may be issued to the applicant. An applicant who passes one (1) or more portions of the skills test but does not pass all portions of the skills test shall retest only on those portions of the skills test the applicant failed.
- (c) An applicant who fails any portion of the skills test four (4) times shall be notified by the State Police that the applicant is required to wait one (1) week and pay a retest fee of fifty dollars (\$50) before retaking a portion of this skills test again.

- (d) Failure of an applicant to notify the State Police prior to missing an appointment for a skills test shall be considered a failure, on all parts of the skills test scheduled to be given, for the purposes of determining number of failures, waiting periods, and retesting fees under paragraph (c) of this subsection for individual applicants. A missed appointment failure under this paragraph shall not be reported as a failure to the board.
 - (e) The provisions of KRS 281A.150 notwithstanding, an application fee shall not be charged for each test that is retaken as a result of a failing score.
- (7) An applicant who seeks reinstatement of a commercial driver's license after a suspension, withdrawal, revocation, or disqualification of less than one (1) year shall pay the reinstatement fee as prescribed by KRS 281A.150(6) and shall receive his *or her* commercial driver's license with all endorsement and restrictions that were in effect at the time of suspension. An applicant who seeks reinstatement of a commercial driver's license after a suspension, withdrawal, revocation, or disqualification of one (1) year or more shall submit to the skills, knowledge, and vision tests.
- (8) (a) The commissioner of the *Department of* Kentucky State Police shall promulgate administrative regulations pursuant to the provisions of KRS Chapter 13A to implement the provisions of this section.
- (b) Within ninety (90) days of April 22, 2006, the State Police shall promulgate administrative regulations under KRS Chapter 13A to set forth the qualifications for contract examiners retained under subsection (2)(b) of this section.

Section 289. KRS 281A.300 is amended to read as follows:

- (1) Any person initially applying for, or initially renewing, a Kentucky CDL instruction permit or operator's license, shall be required to undergo a state and national criminal history background check of state and federal wanted or "hot file" records conducted by the ~~Kentucky~~ State Police. All initial and renewal application forms for a Kentucky CDL instruction permit or operator's license shall conspicuously state the following: "STATE LAW REQUIRES A STATE AND NATIONAL CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF APPLYING FOR A KENTUCKY CDL. ANY PERSON WHO REFUSES TO SUBMIT TO A CRIMINAL HISTORY BACKGROUND CHECK SHALL NOT BE ELIGIBLE TO APPLY FOR, OR BE ISSUED, A KENTUCKY CDL."
- (2) The results of the state and national criminal history background checks shall be sent to the cabinet for review within seventy-two (72) hours. An applicant for a CDL instruction permit may enroll in a commercial driver training program under the Kentucky Community and Technical College System or a proprietary school licensed under KRS Chapter 165A, and may be issued a CDL instruction permit upon enrollment, however the status of the applicant retaining the CDL instruction permit shall not be determined until the results of the background checks are made available to the cabinet. The cabinet shall inform the applicant and the circuit clerk of persons who, based upon the criminal history background check, are either eligible or ineligible to be issued a CDL instruction permit or CDL. The cabinet shall promulgate administrative regulations under KRS Chapter 13A to specify conditions that will cause a person to be denied a CDL instruction permit or CDL based upon the person's criminal history background check.
- (3) Any fee charged by the Kentucky State Police to conduct a criminal history background check shall be paid by the applicant and shall not be refundable. Any fee charged to conduct a criminal history background check shall be an amount not greater than the actual cost of processing the request and conducting the search.
- (4) The criminal history background checks required by this section shall be in addition to any type of background check that may be required by federal statute, rule, regulation, or order.

Section 290. KRS 281A.320 is amended to read as follows:

Any person initially renewing a commercial driver's license or adding an endorsement after September 30, 2002, shall apply for the renewal at least thirty (30) days prior to the expiration date of the license. The purpose of the early renewal procedures is to ensure the criminal history background check required under KRS 281A.300 may be completed prior to the expiration date on the license. A person may obtain the information necessary to conduct the criminal history background check from the circuit clerk. If the person has a law enforcement agency other than the ~~Kentucky~~ State Police conduct the background check, the law enforcement agency may charge the person a nonrefundable fee for the service. Any fee charged by any law enforcement agency to conduct a criminal history

background check shall be an amount not greater than the actual cost of processing the request and conducting the search.

Section 291. KRS 286.8-285 is amended to read as follows:

- (1) In addition to other duties imposed upon the executive director in this subtitle, the executive director shall be authorized to participate in the establishment and implementation of a multistate automated licensing system for mortgage loan brokers, mortgage loan companies, loan officers, or originators.
 - (a) For such purpose, the executive director is authorized to waive or modify, in whole or in part, by rule or by order, any or all of the requirements of this subtitle and to establish new requirements as reasonably necessary to carry out the purpose of this section.
 - (b) These new requirements shall include the fingerprinting of applicants and the submission of those fingerprints, along with any fee required to perform the criminal background record review, to the Federal Bureau of Investigation and *the Department of* Kentucky State Police or an equivalent state department law enforcement agency for state and national criminal background record review of the applicant.
- (2) The executive director shall not be authorized under this section to require a person or individual who is exempt under KRS 286.8-020(1)(a) or (g) to submit information or participate in the uniform multistate licensing program.

Section 292. KRS 304.20-150 is amended to read as follows:

- (1) As used in KRS 304.20-160 to 304.20-190, "authorized agencies" shall mean:
 - (a) State executive director of insurance;
 - (b) The state fire marshal when authorized or charged with the investigation of fires at the place where the fire actually took place;
 - (c) The state Attorney General when authorized or charged with the investigation of fires at the place where the fire actually took place;
 - (d) The commissioner of the Department of *Kentucky* State Police;
 - (e) The full-time Commonwealth's or county attorney responsible for prosecutions in the county where the fire occurred;
 - (f) The Federal Bureau of Investigation or any other federal agency having the authority to investigate federal offenses arising from arson; and
 - (g) Any United States' attorney's office authorized or charged with investigation or prosecution of the fire in question or the violation of any statute arising from said fire.
- (2) As used in KRS 304.20-160 to 304.20-190, "relevant" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.
- (3) For the purposes of KRS 304.20-160 to 304.20-190, information will be "deemed important" if such information is requested by an authorized agency.
- (4) "Insurer," as used in KRS 304.20-160 to 304.20-190, shall be defined in the same manner as it is defined in KRS 304.1-040, and shall include the Kentucky FAIR plan and reinsurance association, and all authorized persons acting on behalf of an insurer.

Section 293. KRS 304.20-190 is amended to read as follows:

The provisions of KRS 304.20-160 to 304.20-180 shall not be construed to affect or repeal any ordinance or resolution of any county or city of any class relating to fire prevention or the control of arson, but the jurisdiction of the state fire marshal and the commissioner of the Department of *Kentucky* State Police in such county or city is to be concurrent with that of the county and city authorities.

Section 294. KRS 311.565 is amended to read as follows:

- (1) The board may:

- (a) Exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy, which shall include but not be limited to promulgation of reasonable administrative regulations enabling the board to regulate the conduct of its licensees;
- (b) Promulgate reasonable administrative regulations establishing moral, physical, intellectual, educational, scientific, technical, and professional qualifications of applicants for licenses and permits that may be issued by the board;
- (c) Issue, deny, suspend, limit, restrict, and revoke any licenses or permits that may be issued by the board, and to reprimand or to place licensees on probation, in compliance with the provisions of KRS 311.530 to 311.620;
- (d) Appoint an executive director and assistant executive directors and fix their compensation. The executive director shall oversee the work of the board, shall be authorized to discharge the duties of the secretary, as provided by KRS 311.530 to 311.620, and shall carry out the duties of the executive director as set forth elsewhere in this chapter;
- (e) Appoint a general counsel and assistant general counsel and fix their compensation;
- (f) Appoint investigatory personnel and fix their compensation;
- (g) Appoint one (1) or more hearing officers, who need not be members of the board, and fix their compensation. Every hearing officer shall be vested with the full and complete power and authority of the board to schedule and conduct hearings on behalf of and in the name of the board on all matters referred for hearing by the board or secretary thereof, including, among other things, proceedings for placing licensees on probation and for limitation, suspension, and revocation of licenses. All administrative hearings conducted by the board, a member of the board, or a hearing officer appointed by the board, shall be conducted in accordance with KRS Chapter 13B. No hearing officer shall be empowered to place any licensee on probation or to issue, refuse, suspend, limit, or revoke any license;
- (h) Appoint committees of licensees, who need not be board members, to review issues of public or medical interest before the board and to make recommendations to the board on the issues;
- (i) Promulgate administrative regulations to promote the efficient and fair conduct of disciplinary proceedings;
- (j) Promulgate a code of conduct governing the practice of medicine and osteopathy, which shall be based upon generally-recognized principles of professional ethical conduct;
- (k) Utilize the services and facilities of professional organizations, and procure and receive the assistance and recommendations of professional organizations in administering KRS 311.530 to 311.620;
- (l) Make its personnel and facilities available to other governmental entities under mutually agreeable terms and conditions;
- (m) Issue regular licenses without further testing by endorsement from another state having qualifications and standards at least as high as those of this state or by endorsement from the National Board of Medical Examiners, the National Board of Examiners for Osteopathic Physicians and Surgeons, the National Joint Committee of Preregistration Physician Training Programs, or any approved successors thereof;
- (n) Issue and renew regular licenses to practice medicine or osteopathy in accordance with KRS 311.530 to 311.620 and any reasonable regulations of the board;
- (o) Issue and renew, or refuse to issue or renew, or cancel and terminate limited licenses pursuant to administrative regulations promulgated by the board; provided however, no person who held a limited license for institutional practice or general practice as of September 1, 1972, shall be denied the renewal of that limited license for nondisciplinary reasons;
- (p) Appoint examiners, who need not be members of the board, and employ or contract with the Federation of State Medical Boards of the United States, Inc., or the National Board of Medical Examiners or other organizations, agencies, or individuals to prepare examination questions and grade examination papers;

- (q) Determine the schools, colleges, universities, institutions, and training acceptable in connection with licensure under KRS 311.530 to 311.620;
 - (r) Prescribe the time, place, method, manner, scope, and content of examinations;
 - (s) Prescribe all forms which it considers appropriate, and require the submission of photographs, fingerprints, and personal history data;
 - (t) Require a criminal background investigation of all persons applying for licensure at the time of initial application, and at other times at the request of the board for good cause shown, by means of a fingerprint check by the *Department of Kentucky* State Police and Federal Bureau of Investigation;
 - (u) Prescribe and collect reasonable fees and charges for examinations, directories, and the issuance and renewal of licenses and permits; and
 - (v) Impose fines of not greater than five thousand dollars (\$5,000) per violation and require the licensee to reimburse the board for the costs of the administrative proceedings including consultant fees, upon a finding pursuant to disciplinary proceedings that the licensee has violated any provision of KRS 311.595 to 311.597 or duly-promulgated disciplinary regulation of the board.
- (2) The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a physician licensed by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a physician is falsely accused.
 - (3) The board, the hearing officer, and investigators hired by the board shall receive training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedure in sex offense cases, and effective intervention with victims and offenders.

Section 295. KRS 311A.100 is amended to read as follows:

The board may require a criminal background investigation of an applicant for licensure or certification, including by means of a fingerprint check by the *Department of Kentucky* State Police or the Federal Bureau of Investigation, or both.

Section 296. KRS 314.011 is amended to read as follows:

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

- (1) "Board" means Kentucky Board of Nursing;
- (2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A;
- (3) "Nurse" means a person who is licensed or holds the privilege to practice under the provisions of this chapter as a registered nurse or as a licensed practical nurse;
- (4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:
 - (a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and
 - (b) Planning, implementation, and evaluation based on nationally accepted standards of nursing practice;
- (5) "Registered nurse" means one who is licensed or holds the privilege under the provisions of this chapter to engage in registered nursing practice;
- (6) "Registered nursing practice" means the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:
 - (a) The care, counsel, and health teaching of the ill, injured, or infirm;
 - (b) The maintenance of health or prevention of illness of others;

- (c) The administration of medication and treatment as prescribed by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses. Components of medication administration include but are not limited to:
 - 1. Preparing and giving medications in the prescribed dosage, route, and frequency, including dispensing medications only as defined in subsection (17)(b) of this section;
 - 2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
 - 3. Intervening when emergency care is required as a result of drug therapy;
 - 4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
 - 5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
 - 6. Instructing an individual regarding medications;
 - (d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care; and
 - (e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses;
- (7) "Advanced registered nurse practitioner" means one who is registered and designated to engage in advanced registered nursing practice including the nurse anesthetist, nurse midwife, clinical nurse specialist, and nurse practitioner pursuant to KRS 314.042;
- (8) "Advanced registered nursing practice" means the performance of additional acts by registered nurses who have gained added knowledge and skills through an organized postbasic program of study and clinical experience and who are certified by the American Nurses' Association or other nationally established organizations or agencies recognized by the board to certify registered nurses for advanced nursing practice. The additional acts shall, subject to approval of the board, include but not be limited to prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced registered nurse practitioners who engage in these additional acts shall be authorized to issue prescriptions for and dispense nonscheduled legend drugs as defined in KRS 217.905 and to issue prescriptions for but not to dispense Schedules II through V controlled substances as classified in KRS 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, and 218A.130, under the conditions set forth in KRS 314.042 and regulations promulgated by the Kentucky Board of Nursing on or before August 15, 2006.
- (a) Prescriptions issued by advanced registered nurse practitioners for Schedule II controlled substances classified under KRS 218A.060 shall be limited to a seventy-two (72) hour supply without any refill. Prescriptions issued under this subsection for psychostimulants may be written for a thirty (30) day supply only by an advanced registered nurse practitioner certified in psychiatric-mental health nursing who is providing services in a health facility as defined in KRS Chapter 216B or in a regional mental health-mental retardation services program as defined in KRS Chapter 210.
 - (b) Prescriptions issued by advanced registered nurse practitioners for Schedule III controlled substances classified under KRS 218A.080 shall be limited to a thirty (30) day supply without any refill. Prescriptions issued by advanced registered nurse practitioners for Schedules IV and V controlled substances classified under KRS 218A.100 and 218A.120 shall be limited to the original prescription and refills not to exceed a six (6) month supply.
 - (c) Limitations for specific controlled substances which are identified as having the greatest potential for abuse or diversion, based on the best available scientific and law enforcement evidence, shall be established in an administrative regulation promulgated by the Kentucky Board of Nursing. The regulation shall be based on recommendations from the Controlled Substances Formulary Development Committee, which is hereby created. The committee shall be composed of two (2) advanced registered nurse practitioners appointed by the Kentucky Board of Nursing, one (1) of whom shall be designated as

a committee co-chair; two (2) physicians appointed by the Kentucky Board of Medical Licensure, one (1) of whom shall be designated as a committee co-chair; and one (1) pharmacist appointed by the Kentucky Board of Pharmacy. The initial regulation shall be promulgated on or before August 15, 2006, and shall be reviewed at least annually thereafter by the committee.

Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation;

- (9) "Licensed practical nurse" means one who is licensed or holds the privilege under the provisions of this chapter to engage in licensed practical nursing practice;
- (10) "Licensed practical nursing practice" means the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:
 - (a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist;
 - (b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board;
 - (c) The administration of medication or treatment as authorized by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;
 - (d) Teaching, supervising, and delegating except as limited by the board; and
 - (e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;
- (11) "School of nursing" means a nursing education program preparing persons for licensure as a registered nurse or a practical nurse;
- (12) "Continuing education" means offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge;
- (13) "Nursing assistance" means the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse;
- (14) "Sexual assault nurse examiner" means a registered nurse who has completed the required education and clinical experience and maintains a current credential from the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the *Office of the Kentucky* State Medical Examiner pursuant to KRS 216B.400(4);
- (15) "Competency" means the application of knowledge and skills in the utilization of critical thinking, effective communication, interventions, and caring behaviors consistent with the nurse's practice role within the context of the public's health, safety, and welfare;
- (16) "Credential" means a current license, registration, certificate, or other similar authorization that is issued by the board;
- (17) "Dispense" means:
 - (a) To receive and distribute noncontrolled legend drug samples from pharmaceutical manufacturers to patients at no charge to the patient or any other party; or
 - (b) To distribute noncontrolled legend drugs from a local, district, and independent health department, subject to the direction of the appropriate governing board of the individual health department;
- (18) "Dialysis care" means a process by which dissolved substances are removed from a patient's body by diffusion, osmosis, and convection from one (1) fluid compartment to another across a semipermeable membrane;

- (19) "Dialysis technician" means a person who is not a nurse, a physician assistant, or a physician and who provides dialysis care in a licensed renal dialysis facility under the direct, on-site supervision of a registered nurse or a physician; and
- (20) "Clinical internship" means a supervised nursing practice experience which involves any component of direct patient care.

Section 297. KRS 314.103 is amended to read as follows:

The board may require a criminal background investigation of an applicant for endorsement by means of a fingerprint check by the **Department of Kentucky** State Police and the Federal Bureau of Investigation.

Section 298. KRS 329.010 is amended to read as follows:

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

- (1) "Detection of deception examiner," referred to in this chapter as "examiner," means any person, other than a trainee, who uses any device or instrument to test or question individuals for the purpose of detecting deception. Before a person may be licensed as an examiner, he *or she* must have at least one (1) year's experience in detection of deception. Before an examiner may supervise a trainee, he *or she* must have at least two (2) years' experience in detection of deception.
- (2) "Trainee" means any person who has successfully completed a polygraph examiner's course at a polygraph examiner's school approved by the cabinet, but who has not been awarded the final certificate of proficiency or graduate certificate from the school, or any person, not a licensed examiner, who administers detection of deception examinations under the direct, personal supervision and control of a licensed examiner who is licensed by this state. No examiner may have more than two (2) trainees under his *or her* supervision and control at any one (1) time.
- (3) "Person" means any natural person, partnership, association, corporation, or trust.
- (4) "Cabinet" means the Justice *and Public Safety* Cabinet of the Commonwealth of Kentucky.
- (5) "Secretary" means the secretary of the Justice *and Public Safety* Cabinet of the Commonwealth of Kentucky.
- (6) "Polygraph" means an instrument which records permanently and simultaneously a subject's cardiovascular and respiratory patterns and other physiological changes pertinent to the detection of deception.
- (7) "Polygraph examiner" means the same as detection of deception examiner.

Section 299. KRS 329.030 is amended to read as follows:

- (1) No person shall administer a detection of deception examination, as set forth in KRS 329.010, or any imitation thereof, without first securing a trainee's license or an examiner's license. Each application for a trainee's license shall be made to the cabinet within ten (10) days of the commencement of the trainee's internship, and said application shall contain such information as may be reasonably required by the cabinet. Each application for a trainee license or a renewal or extension shall be accompanied by a fee of twenty-five dollars (\$25), which is nonrefundable. Each application for an examiner's license shall be made to the cabinet in writing on forms provided by the cabinet and shall contain such information as may be required by the cabinet to determine the eligibility of the applicant. Each application for an examiner's license shall be accompanied by a fee of fifty dollars (\$50), which is nonrefundable.
- (2) Each applicant for an examiner's license shall submit his *or her* fingerprints to the cabinet. The cabinet is authorized to exchange fingerprint data with the **Department of Kentucky** State Police and the Federal Bureau of Investigation in order to conduct a criminal history background check of the applicant. Each applicant shall also submit a sworn affidavit that said applicant:
 - (a) Is a citizen of the United States;
 - (b) Is at least eighteen (18) years of age;
 - (c) Has administered detection of deception examinations for a period of at least one (1) year using the instrumentation prescribed in KRS 329.020;
 - (d) Has completed a course of formal training in detection of deception in an institution accepted by the cabinet;

- (e) Has not been convicted of a misdemeanor involving moral turpitude or a felony, or who has not been released or discharged under other than honorable conditions from any of the Armed Services of the United States, or any branch of the state, city or federal government; and
 - (f) Any other information required by the cabinet to determine the examiner's competency to obtain a license to practice in this state.
- (3) Upon receipt of an application for a trainee's license or for an examiner's license, the secretary shall investigate each application, and no license will be issued until said investigation is complete.
 - (4) The cabinet shall establish such reasonable rules and regulations for the trainee during his internship as may be reasonably necessary for the purpose of insuring that the trainee meets adequate professional standards established by the cabinet.
 - (5) The cabinet may require applicants for an examiner's license to pass an examination which shall be confined to such knowledge, practical ability and skill as is essential for performing the duties of a detection of deception examiner. The cabinet shall ***promulgate administrative***~~[make rules and]~~ regulations for conducting examinations and shall define the standards to be acquired to constitute passing the examination.
 - (6) The cabinet shall ***promulgate administrative***~~[establish such reasonable rules and]~~ regulations~~[for the examiner during his period of licensure as may be reasonably necessary]~~ for the purpose of insuring that the examiner maintain adequate professional standards established by the cabinet.

Section 300. KRS 329A.040 is amended to read as follows:

- (1) Upon receipt of a license application, accompanied by a nonrefundable, nonproratable fee of not less than one hundred dollars (\$100) and not more than four hundred dollars (\$400), as established by the board by promulgation of administrative regulations, the board shall:
 - (a) Conduct an investigation to determine whether the statements made in the application are true; and
 - (b) Submit the application, including fingerprints as appropriate, to the ***Department of*** Kentucky State Police and the Administrative Office of the Courts for a state criminal history background check. The ***Department of*** Kentucky State Police may submit fingerprints of any applicant to the Federal Bureau of Investigation for a national criminal history background check. The board may by administrative regulation impose additional qualifications to meet the requirements of Pub. L. No. 92-544. The applicant for licensure shall bear the additional cost, in an amount not to exceed the actual cost, incurred for the criminal background check.
- (2) Following the investigation process, the board shall either deny or approve the application.
 - (a) If the application for a license is denied, the board:
 - 1. Shall notify the applicant in writing and set forth the grounds for denial. If the grounds are subject to correction by the applicant, the notice of denial shall so state and specify a reasonable period of time within which the applicant must make the correction; and
 - 2. Shall grant a hearing to the denied applicant in accordance with the provisions of KRS Chapter 13B.
 - (b) If the application for a license is approved, the board shall issue:
 - 1. A license to be posted conspicuously in the licensee's principal place of business; and
 - 2. A wallet-sized laminated identification card to each individual licensee to be carried while engaged in private investigation. Information on the card shall include the expiration date of the license and the licensee's:
 - a. Name;
 - b. Photograph;
 - c. Physical characteristics; and
 - d. License number.
- (3) A license or identification card issued under subsection (2) of this section is not assignable and is personal to the licensee.

- (4) For purposes of this section and KRS 329A.035, any company whose workforce is comprised of no more than one (1) private investigator shall only be required to have an individual private investigator's license. If at any time the workforce of such a company increases, the company shall notify the board of the workforce increase and shall seek a company license in addition to the individual private investigator's license.

Section 301. KRS 332.015 is amended to read as follows:

As used in this chapter:

- (1) "Department" means the Department of Kentucky State Police;
- (2) "Commissioner" means the commissioner of the *Department of* Kentucky State Police;
- (3) "Driver training" means instruction of persons in the operation of motor vehicles which are not commercial motor vehicles;
- (4) "Driver training school" means any person, firm, partnership, association or corporation which offers a course of driver training for which a fee or tuition is charged;
- (5) "Person," when referring to a driver training school, means person, firm, partnership, association, or corporation.

Section 302. KRS 332.095 is amended to read as follows:

- (1) All CDL driver training schools, as defined in KRS 165A.310, shall offer a minimum one hundred sixty (160) hours of instruction to each student that has never been issued a CDL by any state. Each school shall be required to use the curriculum that has been approved by the State Board for Proprietary Education in consultation with the *Department of* Kentucky State Police and the Kentucky Community and Technical College System. Each school shall perform an evaluation of each student and determine the student's skill level to operate a commercial motor vehicle as beginner, intermediate, or advanced. The curriculum shall require a minimum number of hours of instruction based upon a student's skill level.
- (2) Each school may provide the one hundred sixty (160) hour approved curriculum in a manner that best utilizes the staff and equipment of the school including, but not limited to, nights, weekends, holidays, and hours of operation.
- (3) All CDL driver training schools, as defined in KRS 165A.310, may offer a refresher course of instruction to a resident who has one (1) year or more verifiable experience operating a commercial motor vehicle. The schools shall verify and maintain records documenting those students attending a refresher course. A refresher course may be offered on an hourly basis.
- (4) The ratio of students to instructors during a one hundred sixty (160) hour course shall not exceed:
 - (a) Thirty (30) students to one (1) instructor during classroom instruction;
 - (b) Six (6) students to one (1) instructor during off-the-road training; and
 - (c) Three (3) students to one (1) instructor during on-the-road training.
- (5) All CDL driver training schools, as defined in KRS 165A.310, shall require each student to undergo a drug test at the time the person applies to enroll in the school.

Section 303. KRS 350.052 is amended to read as follows:

- (1) Any officer appointed by the secretary pursuant to KRS 350.035(2) shall be empowered to arrest, without a warrant, any person detected by him *or her* to be violating the provisions of this chapter which constitute criminal offenses.
- (2) Any officer appointed by the secretary pursuant to KRS 350.035(2) shall have the authority to use physical force, which he *or she* believes necessary, in accomplishing any lawful arrest for a criminal offense; however, deadly physical force may be used only when the officer is authorized to make an arrest, the arrest is for a felony involving the threatened use of physical force likely to cause death or serious physical injury, and the officer believes that the person to be arrested is likely to endanger human life unless arrested without delay.
- (3) Any officer appointed by the secretary pursuant to KRS 350.035(2) shall meet the qualifications set forth in KRS 61.300(1), (4), and (5) and shall prior to appointment:

- (a) Successfully complete not fewer than eighty (80) hours of training in a program provided by the Department of Criminal Justice Training, Justice *and Public Safety* Cabinet, and dealing comprehensively with the subjects of criminal law and the law of arrest, search and seizure; and
- (b) Demonstrate in written and practical examinations approved by the Department of Criminal Justice Training, Justice *and Public Safety* Cabinet, knowledge of and proficiency in firearms safety, range firing, the moral and legal aspects of firearms use, and first aid.

Section 304. KRS 403.700 is amended to read as follows:

- (1) The Council on Domestic Violence and Sexual Assault is created and established for the purpose of planning and direction of legal, protection, and support services related to domestic violence and sexual assault, and to increase the awareness of all Kentuckians regarding the prevalence and impact of these crimes.
- (2) Members of the council shall include:
 - (a) The Attorney General or a designee;
 - (b) The secretary of the Cabinet for Health and Family Services or a designee;
 - (c) The secretary of the Justice *and Public Safety* Cabinet or a designee;
 - (d) The public advocate or a designee;
 - (e) The executive director of the Division of Child Abuse and Domestic Violence Services;
 - (f) The executive director of the *Office of Legislative and Intergovernmental Services of the Justice and Public Safety Cabinet* ~~Kentucky Criminal Justice Council~~;
 - (g) The executive director of the Commission on Women;
 - (h) At the direction of the Chief Justice of the Supreme Court, the director of the Administrative Office of the Courts;
 - (i) One (1) Circuit Court Judge, one (1) family court judge, and one (1) District Court Judge, who shall be appointed by the Chief Justice of the Supreme Court;
 - (j) The executive director of the Kentucky Domestic Violence Association;
 - (k) The president of the Kentucky Domestic Violence Association or a designee;
 - (l) The executive director of the Kentucky Association of Sexual Assault Programs;
 - (m) The president of the Kentucky Association of Sexual Assault Programs or a designee;
 - (n) Two (2) members of the Senate who shall be appointed by the President of the Senate;
 - (o) Three (3) members of the House of Representatives who shall be appointed by the Speaker of the House; and
 - (p) The following members, who shall be appointed by the secretary for Health and Family Services. To be eligible for appointment under this paragraph, a person shall have an understanding of, and demonstrated commitment to, addressing crimes involved in domestic or sexual violence:
 - 1. One (1) county attorney;
 - 2. One (1) Commonwealth's attorney;
 - 3. One (1) Circuit Court Clerk;
 - 4. One (1) sheriff;
 - 5. One (1) peace officer;
 - 6. Two (2) representatives of local domestic violence coordinating councils or sexual assault response teams;
 - 7. One (1) advocate for adult victims of domestic or sexual violence;
 - 8. One (1) advocate for child witnesses of domestic or sexual violence;
 - 9. One (1) physician;

10. One (1) sexual assault nurse examiner;
 11. One (1) mental health professional with demonstrated expertise in treating offenders;
 12. One (1) employee of the Department for Community Based Services who provides direct services to victims of domestic violence;
 13. One (1) person employed as a probation or parole officer; and
 14. Two (2) citizen at-large members.
- (3) The secretary of Health and Family Services shall appoint two (2) co-chairs and two (2) vice chairs of the council. One (1) of the vice chairs shall be a council member who is a criminal justice professional. The co-chairs and vice chairs shall serve for a term of one (1) year after which they may be reappointed by the secretary.
 - (4) Council members shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment. Members shall not serve longer than two (2) consecutive four (4) year terms.
 - (5) The council shall establish an executive committee, the membership of which shall be named by the co-chairs of the council.
 - (6) The duties and responsibilities of the council shall include, but not be limited to, the following:
 - (a) Promoting coordination among agencies and officials responsible for addressing domestic violence and sexual assault;
 - (b) Determining the availability of services for victims, children who witness domestic violence or sexual assault, and offenders;
 - (c) Facilitating the development of local domestic violence councils and sexual assault response teams that shall include publication of model protocols, training, and technical assistance;
 - (d) Promoting community awareness and the prevention of domestic and sexual violence;
 - (e) Providing assistance to the Attorney General, the Administrative Office of the Courts, the Justice *and Public Safety* Cabinet, and the Cabinet for Health and Family Services in the development of training curricula, treatment programs, and model policies related to domestic violence and sexual assault;
 - (f) Reviewing and analyzing data and information relating to domestic violence and sexual assault from existing sources including, but not limited to, the *Department of* Kentucky State Police, the Cabinet for Health and Family Services, the Department of Corrections, and the Administrative Office of the Courts;
 - (g) Recommending to the appropriate entity changes in state programs, legislation, administrative regulations, policies, budgets, and treatment and service standards relating to domestic violence and sexual assault; and
 - (h) Preparing a biennial report to be submitted no later than July 1 of every odd-numbered year to the Governor, the Legislative Research Commission, and the Chief Justice of the Supreme Court.
 - (7) The council shall establish any committees necessary to carry out its duties.
 - (8) The council shall be attached to the Division of Child Abuse and Domestic Violence Services for administrative purposes. Members of the council shall be eligible to receive actual and reasonable travel expenses.
 - (9) The secretary of the Justice *and Public Safety* Cabinet and the secretary of the Cabinet for Health and Family Services shall provide the necessary staff to assist the council in carrying out its duties and responsibilities.
- Section 305. KRS 403.707 is amended to read as follows:
- (1) The Council on Domestic Violence and Sexual Assault shall create a Sexual Assault Response Team Advisory Committee.

- (2) The Sexual Assault Response Team Advisory Committee shall be co-chaired by the executive director of the Kentucky Association of Sexual Assault Programs and the commissioner of the *Department of* Kentucky State Police or the commissioner's designee.
- (3) The membership of the Sexual Assault Response Team Advisory Committee shall consist of the following:
 - (a) The executive director of the Kentucky Board of Nursing or the executive director's designee;
 - (b) The executive director of the Kentucky Nurses Association or the executive director's designee;
 - (c) The executive director of the Kentucky Hospital Association or the executive director's designee;
 - (d) The director of the *Department of* Kentucky State Police Crime Lab;
 - (e) The chief medical examiner or the chief medical examiner's designee;
 - (f) The executive director of the Division of Child Abuse and Domestic Violence Services or the executive director's designee;
 - (g) The director of the Victims' Advocacy Division of the Office of the Attorney General or the director's designee;
 - (h) A sexual assault nurse examiner serving on the Governor's Council on Domestic Violence and Sexual Assault;
 - (i) A representative from a sexual assault response team serving on the Council on Domestic Violence and Sexual Assault;
 - (j) A physician appointed by the co-chairs of the Council on Domestic Violence and Sexual Assault; and
 - (k) A Commonwealth's attorney or an assistant Commonwealth's attorney appointed by the co-chairs of the Council on Domestic Violence and Sexual Assault.
- (4) Members appointed under paragraphs (h) to (k) of subsection (3) shall serve at the pleasure of the appointing authority and shall not serve longer than four (4) years without reappointment.
- (5) The Sexual Assault Response Team Advisory Committee shall:
 - (a) Serve in an advisory capacity to the Kentucky Board of Nursing in accomplishing the duties set forth under KRS 314.142;
 - (b) Serve in an advisory capacity to the chief medical examiner in the development of the statewide sexual assault protocol required under KRS 216B.400(4);
 - (c) Develop a model protocol for the operation of sexual assault response teams which shall include the roles of sexual assault nurse examiners, physicians, law enforcement, prosecutors, and victim advocates;
 - (d) Provide information and recommendations concerning the activities of the agency or organization represented by each individual committee member as related to sexual assault issues and programs within the purview of the agency or organization; and
 - (e) Recommend to the Council on Domestic Violence and Sexual Assault any changes in statute, administrative regulation, training, policy, and budget to promote a multidisciplinary response to sexual assault.

Section 306. KRS 403.737 is amended to read as follows:

All forms, affidavits, emergency protective orders, domestic violence orders, orders amending an existing protective order, or other orders issued pursuant to KRS 403.715 to 403.785, or the laws of another jurisdiction which are entitled to full faith and credit in Kentucky pursuant to the provisions of 18 U.S.C. sec. 2265, which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts after consultation with the Justice *and Public Safety* Cabinet. If the provisions of a protective order are contained in an order which is narrative in nature, the prescribed form shall be used in addition to the narrative order.

Section 307. KRS 422.285 is amended to read as follows:

- (1) At any time, a person who was convicted of and sentenced to death for a capital offense and who meets the requirements of this section may request the forensic deoxyribonucleic acid (DNA) testing and analysis of any

evidence that is in the possession or control of the court or Commonwealth, that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence.

- (2) After notice to the prosecutor and an opportunity to respond, the court shall order DNA testing and analysis if the court finds that all of the following apply:
 - (a) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing and analysis;
 - (b) The evidence is still in existence and is in a condition that allows DNA testing and analysis to be conducted; and
 - (c) The evidence was not previously subjected to DNA testing and analysis or was not subjected to the testing and analysis that is now requested and may resolve an issue not previously resolved by the previous testing and analysis.
- (3) After notice to the prosecutor and an opportunity to respond, the court may order DNA testing and analysis if the court finds that all of the following apply:
 - (a) A reasonable probability exists that either:
 1. The petitioner's verdict or sentence would have been more favorable if the results of DNA testing and analysis had been available at the trial leading to the judgment of conviction; or
 2. DNA testing and analysis will produce exculpatory evidence;
 - (b) The evidence is still in existence and is in a condition that allows DNA testing and analysis to be conducted; and
 - (c) The evidence was not previously subject to DNA testing and analysis or was not subjected to the testing and analysis that is now requested and that may resolve an issue not previously resolved by the previous testing and analysis.
- (4) If the court orders testing and analysis pursuant to subsection (2) of this section, the court shall order the responsibility for payment, if necessary. If the court orders testing and analysis of this section pursuant to subsection (3) of this section, the court shall require the petitioner to pay the costs of testing and analysis, if required by KRS 17.176. If the court orders testing and analysis under subsection (2) or (3) of this section the court shall appoint counsel to those petitioners who qualify for appointment under KRS Chapter 31.
- (5) If the prosecutor or defense counsel has previously subjected evidence to DNA testing and analysis, the court shall order the prosecutor or defense counsel to provide all the parties and the court with access to the laboratory reports that were prepared in connection with the testing and analysis, including underlying data and laboratory notes. If the court orders DNA testing and analysis pursuant to this section, the court shall order the production of any laboratory reports that are prepared in connection with the testing and analysis and may order the production of any underlying data and laboratory notes.
- (6) If a petition is filed pursuant to this section, the court shall order the state to preserve during the pendency of the proceeding all evidence in the state's possession or control that could be subjected to DNA testing and analysis. The state shall prepare an inventory of the evidence and shall submit a copy of the inventory to the defense and the court. If the evidence is intentionally destroyed after the court orders its preservation, the court may impose appropriate sanctions, including criminal contempt.
- (7) The court may make any other orders that the court deems appropriate, including designating any of the following:
 - (a) The preservation of some of the sample for replicating the testing and analysis; and
 - (b) Elimination samples from third parties.
- (8) If the results of the DNA testing and analysis are not favorable to the petitioner, the court shall dismiss the petition. The court may make further orders as it deems appropriate, including any of the following:
 - (a) Notifying the Department of Corrections and the Parole Board;
 - (b) Requesting that the petitioner's sample be added to the *Department of* Kentucky State Police database; and

(c) Providing notification to the victim or family of the victim.

- (9) In a capital case in which the death penalty has been imposed, notwithstanding any other provision of law that would bar a hearing as untimely, if the results of the DNA testing and analysis are favorable to the petitioner, the court shall order a hearing and make any further orders that are required pursuant to this section or the Kentucky Rules of Criminal Procedure.

Section 308. KRS 422.287 is amended to read as follows:

- (1) When a person is being tried for a capital offense and there is evidence in the case which may be subjected to deoxyribonucleic acid (DNA) testing and analysis, the Commonwealth or the defendant may move to have any item of evidence not previously subjected to DNA testing and analysis tested and analyzed.
- (2) If the court is satisfied that the item of evidence has not been tested and analyzed, that DNA testing and analysis would yield evidence of probative value, and that the item of evidence has not previously been the subject of DNA testing and analysis or that new DNA testing and analysis would yield a more accurate result, the court shall order DNA testing and analysis of the evidence.
- (3) The testing and analysis of the evidence shall be done by the *Department of Kentucky* State Police laboratory or at another laboratory selected by the *Department of Kentucky* State Police laboratory.
- (4) DNA testing and analysis results shall be made available to both the Commonwealth and the defendant and either the Commonwealth or the defendant may move that they be admitted at trial.
- (5) If the defendant is convicted of any offense for which DNA test and analysis results are required to be maintained by law, the DNA test and analysis results obtained pursuant to this section shall be utilized for that purpose, whether or not the test and analysis results were introduced in the case.

Section 309. KRS 431.064 is amended to read as follows:

- (1) In making a decision concerning pretrial release of a person who is arrested for a violation of KRS Chapter 508 or 510, or charged with a crime involving a violation of a protective order issued pursuant to KRS 403.740 or 403.750, the court or agency having authority to make a decision concerning pretrial release shall review the facts of the arrest and detention of the person and determine whether the person:
 - (a) Is a threat to the alleged victim or other family or household member; and
 - (b) Is reasonably likely to appear in court.
- (2) Before releasing a person arrested for or charged with a crime specified in subsection (1) of this section, the court shall make findings, on the record if possible, concerning the determination made in accordance with subsection (1), and may impose conditions of release or bail on the person to protect the alleged victim of domestic violence or abuse and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:
 - (a) An order enjoining the person from threatening to commit or committing acts of domestic violence or abuse against the alleged victim or other family or household member;
 - (b) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly;
 - (c) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;
 - (d) An order prohibiting the person from using or possessing a firearm or other weapon specified by the court;
 - (e) An order prohibiting the person from possession or consumption of alcohol or controlled substances;
 - (f) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in court; or
 - (g) Any combination of the orders set out in paragraphs (a) to (f).
- (3) If conditions of release are imposed, the court imposing the conditions on the arrested or charged person shall:
 - (a) Issue a written order for conditional release; and
 - (b) Immediately distribute a copy of the order to pretrial services.

- (4) The court shall provide a copy of the conditions to the arrested or charged person upon release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.
- (5) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon request, the court shall hold a prompt hearing to review the conditions.
- (6) The victim, as defined in KRS 421.500, of the defendant's alleged crime, or an individual designated by the victim in writing, shall be entitled to a free certified copy of the defendant's conditions of release, or modified conditions of release, upon request to the clerk of the court which issued the order releasing the defendant. The victim or the victim's designee may personally obtain the document at the clerk's office or may have it delivered by mail.
- (7) The circuit clerk, or the circuit clerk's designee, in cooperation with the court that issued the order releasing the defendant, shall cause the conditions of release to be entered into the computer system maintained by the clerk and the Administrative Office of the Courts within twenty-four (24) hours following its filing, excluding weekends and holidays. Any modification of the release conditions shall likewise be entered by the circuit clerk, or the circuit clerk's designee.
- (8) The information entered under this section shall be accessible to any agency designated by the *Department of Kentucky State Police* as a terminal agency for the Law Information Network of Kentucky.
- (9) All orders issued under this section which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts. If the conditions of pretrial release are contained in an order which is narrative in nature, the prescribed form shall be used in addition to the narrative order.
- (10) Any person who violates any condition of an order issued pursuant to this section is guilty of a Class A misdemeanor.

Section 310. KRS 431.105 is amended to read as follows:

Notwithstanding any other statutory provisions to the contrary, all fines and forfeitures recovered in any court as a result of a conviction for the violation of any of the provisions of KRS 189.221, subsection (1) of 189.222, or 189.270, which violation occurred on a state-maintained highway and arrest was made by any peace officer other than a member of the Department of *Kentucky State Police*, *Department of Kentucky Vehicle Enforcement*, Department of Highways, or Department of Vehicle Regulation, shall inure to the benefit of the state, shall be paid to the State Treasurer for the use and benefit of the Department of Highways, and no part shall be returned to the local governmental units from which they were sent. These fines and forfeitures shall be paid into the State Treasury by the court collecting same and within thirty (30) days after imposition and collection.

Section 311. KRS 431.450 is amended to read as follows:

- (1) The Department of *Kentucky State Police* in consultation with the Transportation Cabinet shall design, print, and distribute to all law enforcement agencies in the Commonwealth a uniform citation.
- (2) The citation shall:
 - (a) Be approved by the Supreme Court;
 - (b) Consist of an original document and five (5) copies;
 - (c) Be serially numbered in such a manner that the year of issue and the individual citation number may be readily ascertained; and
 - (d) Contain such other information as may be required by the Supreme Court.
- (3) The Circuit Court clerk shall maintain a system of accountability for all citations issued in accordance with rules and regulations issued by the Supreme Court to assure that citations are not wrongfully destroyed, tampered with, or otherwise compromised in any manner.
- (4) All peace officers in the Commonwealth shall use the uniform citation for all violations of the traffic laws and for all felonies, misdemeanors and violations.

Section 312. KRS 431.4505 is amended to read as follows:

The Justice *and Public Safety* Cabinet shall modify the uniform citation form to include spaces where the peace officer may include:

- (1) The alcohol concentration in cases of violation of KRS 189A.010; and
- (2) Whether the defendant did take, refused to take, or was unable to take for some reason (to be specified on the citation), the alcohol concentration or drug test or tests specified by the peace officer following an arrest for violation of KRS 189A.010.

Section 313. KRS 431.452 is amended to read as follows:

- (1) An offense which is designated as subject to prepayment by specific statutory designation may be prepaid by the violator subject to the terms and conditions of the statute involved.
- (2) When an offense that is not designated as subject to prepayment by specific statutory designation is cited on the same citation with another offense that is subject to prepayment, the officer shall cite the violator to court for all cited offenses. However, if the offense for which prepayment is not allowed is dismissed by the judge prior to the court date listed on the citation, the offense subject to prepayment by specific statutory designation may be prepaid by the violator, and the violator shall not be required to appear in court.
- (3) An offense which is designated as subject to prepayment is subject to the following conditions:
 - (a) Designation as subject to prepayment does not preclude a physical arrest by a peace officer for that offense;
 - (b) Designation as subject to prepayment shall preclude a requirement that the defendant make a court appearance on a uniform citation;
 - (c) Except as provided for in KRS 189.990(25), for any offense designated as subject to prepayment, the defendant may elect to pay the minimum fine for the offense plus court costs to the circuit clerk before the date of his trial or be tried in the normal manner, unless the citation is marked for mandatory court appearance pursuant to KRS 431.015 or subsection (2) of this section, except that the fine for violations of KRS 189.221, 189.222, 189.226, 189.270, or 189.271 shall be in accordance with KRS 189.990(2)(a) and the defendant shall not be allowed to pay the minimum fine as otherwise allowed by this paragraph; and
 - (d) Prepayment of the fine and costs shown on the citation or accompanying schedule shall be considered as a plea of guilty for all purposes.
- (4) When a peace officer issues a uniform citation and no physical arrest is made he *or she* shall, where the citation is designated as subject to prepayment, mark the citation as "PAYABLE", except as provided in KRS 431.015 or subsection (2) of this section.
- (5) The Administrative Office of the Courts, after consultation with the *Department of* Kentucky State Police, the Transportation Cabinet, the Division of Forestry, the Department of Fish and Wildlife Resources, and a representative of law enforcement shall develop a prepayable fine and cost schedule and a uniform statewide instruction sheet for the Commonwealth.

Section 314. KRS 431.650 is amended to read as follows:

- (1) The Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby created.
- (2) The commission shall be comprised of the following members:
 - (a) The commissioner of the Department for Community Based Services or a designee;
 - (b) The commissioner of the Department for Mental Health and Mental Retardation Services or a designee;
 - (c) One (1) social service worker who is employed by the Department for Community Based Services to provide child protective services, who shall be appointed by the secretary of the Cabinet for Health and Family Services;
 - (d) One (1) therapist who provides services to sexually abused children, who shall be appointed by the secretary of the Cabinet for Health and Family Services;
 - (e) The commissioner of the *Department* Kentucky State Police or a designee;

- (f) One (1) law enforcement officer who is a detective with specialized training in conducting child sexual abuse investigations, who shall be appointed by the secretary of the Justice *and Public Safety* Cabinet;
 - (g) One (1) employee of the Administrative Office of the Courts appointed by the Chief Justice of the Supreme Court of Kentucky;
 - (h) Two (2) employees of the Attorney General's Office who shall be appointed by the Attorney General;
 - (i) One (1) Commonwealth's attorney who shall be appointed by the Attorney General;
 - (j) The commissioner of the Department of Education or a designee;
 - (k) One (1) school counselor, school psychologist, or school social worker who shall be appointed by the commissioner of the Department of Education;
 - (l) The executive director of the Division of Child Abuse and Domestic Violence Services or a designee;
 - (m) One (1) representative of a children's advocacy center who shall be appointed by the Governor;
 - (n) One (1) physician appointed by the Governor; and
 - (o) One (1) former victim of a sexual offense or one (1) parent of a child sexual abuse victim who shall be appointed by the Attorney General.
- (3) Appointees shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.
 - (4) The commission shall elect a chairperson annually from its membership.

Section 315. KRS 433.234 is amended to read as follows:

- (1) Willful concealment of unpurchased merchandise of any store or other mercantile establishment on the premises of such store shall be prima facie evidence of an intent to deprive the owner of his property without paying the purchase price therefor.
- (2) All city and county law enforcement agencies shall cause to be made a photograph, a set of fingerprints and a general descriptive report of all persons except juveniles arrested for theft through an act of shoplifting. If convicted, two (2) copies of each item shall be forwarded within thirty (30) days to the Department of *Kentucky* State Police of the Justice *and Public Safety* Cabinet.

Section 316. KRS 433.753 is amended to read as follows:

- (1) When any paper, waste material, litter or other refuse is thrown or dropped from a motor vehicle, the operator thereof shall be deemed prima facie to be guilty of criminal littering.
- (2) It shall be the duty of the *Department of* Kentucky State Police, county sheriffs and police officers, solid waste coordinators appointed by a county or waste management district, city police officers, and all other law enforcement and peace officers within their respective jurisdictions, to enforce the criminal littering laws and the provisions of KRS 224.40-100.
- (3) Any city or county may offer and pay rewards for the giving of information leading to the arrest and conviction of any person, firm or corporation for commission of the offense of criminal littering.
- (4) Violators may prepay to the Circuit Court clerk if prepayment is so noted on the citation and if the littering offense is not combined with an offense that is not prepayable.

Section 317. KRS 434.445 is amended to read as follows:

- (1) Any person who knowingly transfers or causes to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, with the intent to sell or cause to be sold for profit or used to promote the sale of any product, such article on which sounds are so transferred without the consent of the owner, shall be guilty of a Class D felony. Each individual manufacture of such recorded article shall constitute a separate offense. "Owner," for purposes of this section, means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded, and from which the transferred recorded sounds are directly derived.

- (2) Any person who knowingly transfers or causes to be transferred to any phonograph record, disc, wire, tape, film, or other article, any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or used to promote the sale of any product, such article onto which such performance is or distributes, causes the distribution of, or possesses for one (1) or more of these purposes, to be transferred without the consent of the performer, shall be fined not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000) or confined in the penitentiary for not less than one (1) year nor more than five (5) years, or both. Each individual transfer or manufacture of such recorded article shall constitute a separate offense. For purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether or not the owner of the live performance consented to having the live performance recorded or fixed is a proper witness in a proceeding regarding the issue of consent.
- (3) Any person who knowingly, or with reasonable grounds to know, advertises or offers for sale or resale, or sells or resells, or as a rentor, rents or causes the rental of, or distributes or possesses for such purposes any sound recording manufactured without the consent of the owner, as defined in subsection (1) of this section, or any sound recording manufactured without the consent of the performer shall, be guilty of a Class D felony. Possession of five (5) or more duplicate copies or twenty (20) or more individual copies of such recorded articles, produced without the consent of the owner, shall create a rebuttable presumption that such devices are intended for sale or distribution in violation of this section. Each sale or resale of any such article shall constitute a separate offense.
- (4) Any person who knowingly sells or distributes, offers to sell or distribute, possesses for the purpose of sale or distribution any phonograph record, disc, wire, tape, film, or other article now known or later developed on which sounds, images, or both sounds and images have been transferred unless such phonograph record, disc, wire, tape, film, or other article bears the true name and address of the transferor of the sounds and the name of the actual performer or group in a prominent place on its packaging shall be guilty of a Class D felony. Each sale or distribution of any such article shall constitute a separate offense.
- (5) This section does not apply to any person who transfers or causes to be transferred any such sounds or images intended for or in connection with radio or television broadcast or cable transmission or related uses, or for archival purposes, or solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer.
- (6) It shall be the duty of all peace officers within the Commonwealth of Kentucky and the *Department of Kentucky* State Police upon discovery to confiscate the recorded devices produced in violation of this section. Any recorded device produced in violation of this section, which has come into the custody of a peace officer, shall be forfeited and destroyed by the court having jurisdiction. A record of the place where said recorded devices were seized, the kinds and quantities of recorded devices so destroyed, and of the time, place, and manner of the destruction, shall be kept.

Section 318. KRS 439.250 is amended to read as follows:

As used in KRS 439.250 to 439.560, unless the context requires otherwise:

- (1) "Secretary" means the secretary of the Justice *and Public Safety* Cabinet;
- (2) "Commissioner" means the commissioner of the Department of Corrections;
- (3) "Department" means the Department of Corrections;
- (4) "Deputy commissioner" means the deputy commissioner of the *Office*~~Division~~ of Adult Institutions or the deputy commissioner of the *Office*~~Division~~ of Community Services and~~Local~~ Facilities of the Department of Corrections;
- (5) "Board" means the Parole Board created by KRS 439.320.

Section 319. KRS 439.320 is amended to read as follows:

- (1) The Governor shall appoint a Parole Board consisting of seven (7) full-time members and two (2) part-time members, as described in subsection (7) of this section, to be confirmed by the Senate in accordance with KRS 11.160. Each of the two (2) part-time members shall be from a different political party. The Governor shall make each appointment for full-time and part-time members from a list of three (3) names given to him by the *Kentucky State Corrections* Commission~~on Correction and Community Service~~. Each member appointed to the board shall have had at least five (5) years of actual experience in the field of penology, correction work,

law enforcement, sociology, law, education, social work, medicine, or a combination thereof, or have served at least five (5) years previously on the Parole Board. No more than five (5) board members shall be of the same political party. The board shall be attached to the Justice *and Public Safety* Cabinet for administrative purposes only; the Department of Corrections shall provide any clerical, stenographic, administrative, and expert staff assistance the board deems necessary to carry out its duties.

- (2) The Governor shall name one (1) full-time member as chairman of the board.
- (3) The full-time members of the board shall give full time to the duties of their office and shall receive necessary traveling expenses and a salary to be determined pursuant to KRS 64.640(2), except the chairman of the board shall receive additional compensation of one thousand dollars (\$1,000) per year for his *or her* services. Their terms of office shall be four (4) years and until their successors are appointed and have qualified. Their successors shall be appointed thereafter as provided in this section for terms of four (4) years, and a vacancy occurring before expiration of the term of office shall be similarly filled for the unexpired term. The chairman of the board shall serve as such until the expiration of his *or her* term at which time the Governor shall name his *or her* successor and designate the chairman of the board. If a vacancy occurs in the chairmanship of the board before the expiration of the term, the Governor may name a successor to serve for the remainder of the unexpired term.
- (4) The organization of the board shall be determined by the chairman and shall be consistent with administrative regulations promulgated pursuant to KRS 439.340. For policy and procedural matters, four (4) members shall constitute a quorum. Parole and final parole revocation hearings may be done by panels of the board, subject to the following requirements:
 - (a) If a two (2) member panel is utilized, both members of the panel shall agree on the decision or the matter shall be referred to the full board;
 - (b) If a three (3) member panel is utilized, two (2) of the three (3) members of the panel shall agree on a decision or the matter shall be referred to the full board; and
 - (c) If a panel of four (4) or more members is utilized, a majority of the panel shall agree on a decision or the matter shall be referred to the full board.
- (5) The Governor may not remove any member of the board except for disability, inefficiency, neglect of duty, or malfeasance in office. Before removal, he *or she* shall give the member a written copy of the charges against him *or her* and shall fix the time when he *or she* can be heard in his *or her* defense, which shall not be less than ten (10) days thereafter. Upon removal, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the member and the findings thereupon with a record of the proceedings.
- (6) Upon the expiration of the terms of office of the two (2) full-time board members whose terms expire May 23, 1994, the Governor shall appoint two (2) full-time members to serve terms which will expire June 30, 1995. Thereafter, appointments to these two (2) full-time terms shall be for four (4) years and shall be filled as provided for in subsection (3) of this section. The Governor may reappoint present members if they meet the qualifications set forth in subsection (1) of this section.
- (7) The part-time members may participate in considering the grant or revocation of parole at the request of the chairman. No more than one (1) part-time Parole Board member shall serve on any panel of the board as set forth in subsection (4) of this section. The part-time Parole Board member called upon to serve shall be paid at a per diem rate equal to the per diem rate for the salary of a newly appointed full-time member and shall receive necessary travel expenses. The part-time Parole Board member shall serve for a period of four (4) years from the date of appointment and may be reappointed.
- (8) The office of executive director of the Parole Board is created. The office shall be headed by an executive director who shall be appointed by and directly responsible to the secretary of the Justice *and Public Safety* Cabinet in matters relating to administration. The executive director shall be responsible for the support services to the Parole Board in the area of financial, personnel, and facilities management; shall provide recommendations on administrative issues affecting the board to the secretary of the Justice *and Public Safety* Cabinet, the chairman of the Parole Board, and Parole Board members; shall review and draft legislation and promulgate administrative regulations for the board; and shall review parole data and conduct long-range planning as relevant to the planning needs of the board.

Section 320. KRS 439.470 is amended to read as follows:

- (1) The commissioner shall ***promulgate administrative regulations*** ~~[have the power and duty to make rules]~~ for the conduct of persons placed on probation or parole, except ~~that [the]~~ commissioner shall not ***promulgate*** ~~[make]~~ any ***administrative regulation*** ~~[rule]~~ which conflicts with the conditions of probation imposed by the court or conditions of release imposed by the board.
- (2) The commissioner may utilize an approved monitoring device as defined in KRS 532.200(5) in the supervision of persons placed on probation or parole and to impose a reasonable fee on the probationer or parolee, as a condition of probation or parole, for equipment usage.
- (3) The commissioner, or his ***or her*** designee shall:
 - (a) Be responsible for any reports of investigation and supervision as may be requested by the board or the courts;
 - (b) Divide the ***Commonwealth*** ~~[state]~~ into districts and assign probation and parole officers to serve in the various districts and courts;
 - (c) Direct the work of the officers and other employees assigned to him ***or her***;
 - (d) Formulate methods of investigation, supervision, record keeping, and reports;
 - (e) Conduct training courses for the staff;
 - (f) Negotiate with public or private groups or institutions for further training of employees and authorize the expenditure of funds for that purpose when needed;
 - (g) Develop policies on probation and parole work in the light of other welfare administration policies.

Section 321. KRS 439.483 is amended to read as follows:

- (1) Each probation and parole officer shall be trained in the requirements of the sexual offender registration laws and shall be able to:
 - (a) Register or reregister a sexual offender; and
 - (b) Answer questions about the sexual offender registration law and its requirements.
- (2) The Justice ***and Public Safety*** Cabinet shall provide each probation and parole office with sufficient copies of the following documents to handle the expected numbers of registrants:
 - (a) The sexual offender registration statutes and any administrative regulations which are promulgated relating to sexual offender registration;
 - (b) A brochure explaining in lay person's terms the requirements of the sex offender registration laws and administrative regulations;
 - (c) Registration forms;
 - (d) Fingerprint cards; and
 - (e) Other documents and supplies necessary to register a sexual offender.

Section 322. KRS 439.580 is amended to read as follows:

As used in KRS 439.590 to 439.630, unless the context otherwise requires:

- (1) "Secretary" means the secretary of the Justice ***and Public Safety*** Cabinet;
- (2) "Commissioner" means the commissioner of the Department of Corrections;
- (3) "Department" means the Department of Corrections;
- (4) "Facility" means the community correctional center; and
- (5) "Relative" means a spouse; child, including step-child, adopted child or child as to whom the prisoner, though not a biological parent, has acted in the place of a parent; parent including a person who, though not a biological parent, has acted in the place of a parent; brother; sister; or grandparents.

Section 323. KRS 441.046 is amended to read as follows:

- (1) All persons arrested or detained in any adult or juvenile detention facility shall be fingerprinted prior to the person's release from custody. A copy of these fingerprints shall be transmitted to the **Department of** Kentucky State Police for review.
- (2) The jailer shall fingerprint persons for other law enforcement agencies.
- (3) The jailer shall submit the fingerprints to the **Department of** Kentucky State Police in the manner and at the time required by the **Department of** Kentucky State Police through administrative regulation.
- (4) The **Department of** Kentucky State Police shall notify the Department of Corrections and the jailer, in writing, of the intentional failure of a jailer to comply with subsection (1), (2), or (3) of this section. Upon the first receipt of the notification of an intentional failure to comply with subsection (1), (2), or (3) of this section, the Department of Corrections shall issue a formal written warning to the jailer setting forth the consequences of continued intentional failure to comply with subsection (1), (2), or (3) of this section.
- (5) If the jailer intentionally failed to comply with any fingerprinting requirements of subsection (1), (2), or (3) of this section, after being warned of such intentional failure, the Department of Corrections shall have authority to withhold the state contribution under KRS 441.206 and may require the jailer to return the state contribution funds received under KRS 441.206 for any period in which he or she intentionally failed to comply after being warned.

Section 324. KRS 441.115 is amended to read as follows:

- (1) For the purpose of raising the level of competence of jailers and jail personnel, the department shall maintain a jail staff training program to provide training for jailers and jail personnel consistent with the standards promulgated pursuant to KRS 441.055 and shall keep records of jailers and jail personnel who satisfactorily complete basic and annual continuing education. The training program shall include training on the human immunodeficiency virus infection and acquired immunodeficiency syndrome approved by the Cabinet for Health and Family Services. A curriculum advisory committee composed of jailers, their representatives, and recognized professionals in the field of jail administration shall advise the department concerning the training needs of jailers and jail personnel. The jail staff training program shall be directed and staffed ~~by knowledgeable persons who have sufficient experience, training, and education in jail operations. The department shall not charge a fee for training jailers, their deputies, or jailers-elect.~~ ~~with the Governmental Services Center at Kentucky State University,~~ ~~in coordination~~ by knowledgeable persons who have sufficient experience, training, and education in jail operations. The department shall not charge a fee for training jailers, their deputies, or jailers-elect.
- (2) Beginning in August, 1982, each jailer shall receive an expense allowance to help defray the costs of his participation in the jail staff training program. The expense allowance shall be in the amount of three hundred dollars (\$300) per month payable out of the State Treasury. Expense allowance payments shall be discontinued if the jailer fails to satisfactorily complete annual continuing training. Expense allowance payments shall be resumed following a discontinuance for failure to satisfactorily complete basic or annual training only upon the jailer's satisfactory completion of the training.
- (3) The allowance authorized in subsections (2) and (4) of this section shall be considered as operating expenses of the jailer's office and shall not be considered as part of his compensation. Jailers shall not be required to keep records verifying the expenditures from the allowance provided by the state.
- (4) In order to receive the expense allowance for their first year in office, jailers who have been elected to office for the first time, shall, before taking office, successfully complete a training program designed for new jailers and conducted by the personnel of the jail staff training program. This provision shall not apply if the jailer-elect is ill and unable to complete the training before taking office. In such cases, the jailer-elect shall successfully complete a new jailer training program during his first year in office in order to receive the expense allowance. The county or urban-county government in which the jailer-elect serves shall pay out of the jail budget, once he takes office, all necessary and reasonable travel expenses incurred by the jailer-elect in attending the new jailer training program.
- (5) All jailers shall successfully complete the training required. If a jailer does not successfully complete the required training within the time specified, he **or she** shall not receive the expense allowance specified in subsection (2) of this section until he **or she** successfully completes the required training.

Section 325. KRS 500.090 is amended to read as follows:

- (1) All property which is subject to forfeiture under any section of the Kentucky Penal Code shall be disposed of in accordance with this section.

- (a) Property other than firearms which is forfeited under any section of this code may, upon order of the trial court, be destroyed by the sheriff of the county in which the conviction was obtained.
 - (b) Property other than firearms which is forfeited under any section of this code may, upon order of the trial court, be sold at public auction. The expenses of keeping and selling such property and the amount of all valid recorded liens that are established by intervention as being bona fide shall be paid out of the proceeds of the sale. The balance shall be paid to:
 - 1. The state, if the property was seized by an agency of the state or peace officer thereof;
 - 2. The county, if the property was seized by the sheriff or an agency or peace officer of the county;
 - 3. The Department of Fish and Wildlife Resources, if the property was seized by a peace officer of the Department of Fish and Wildlife or was seized by any other officer for violation of KRS Chapter 150;
 - 4. The city, if the property was seized by the city or by an agency or peace officer thereof and the property was delivered to the city property clerk;
 - 5. The city (ninety percent (90%) of the proceeds) and the sheriff (ten percent (10%) of the proceeds), if the property was seized by the city or by an agency or peace officer thereof and the property was delivered to the sheriff or the county police; or
 - 6. The state, if the property was seized by any combination of agencies listed above.
 - (c) Subject to the duty to return confiscated firearms and ammunition to innocent owners pursuant to this section, all firearms and ammunition confiscated by a state or local law enforcement agency, all firearms ordered forfeited by a court, and all abandoned firearms and ammunition coming into the custody of a state or local law enforcement agency and not retained for official use shall be transferred to the **Department of** Kentucky State Police for disposition as provided by KRS 16.220. The transfer shall occur not more than ninety (90) days after the abandonment of the firearm or ammunition to the law enforcement agency or not more than ninety (90) days after its confiscation, unless a court requires the firearm or ammunition for use as evidence, in which case it shall be transferred to the **Department of** Kentucky State Police not more than ninety (90) days following the order of forfeiture by the court or after the court returns the firearm or ammunition from use as evidence. Prior to the sale of any firearm or ammunition, the law enforcement agency shall make a bona fide attempt to determine if the firearm or ammunition to be sold has been stolen or otherwise unlawfully obtained from an innocent owner and return the firearm and ammunition to its lawful innocent owner, unless that person is ineligible to purchase a firearm under federal law. This subsection relating to auction of firearms and ammunition shall not apply to firearms and ammunition auctioned by the Department of Fish and Wildlife that may be sold to individual purchasers residing in Kentucky who are eligible under federal law to purchase firearms and ammunition of the type auctioned.
 - (d) If property which is forfeited under any section of this code is determined by the trial court to be worthless, encumbered with liens in excess of its value, or otherwise a burdensome asset, the court may abandon any interest in such property. Property which is abandoned pursuant to this section shall be returned to the lawful claimant upon payment of expenses for keeping the property.
 - (e) Property which is forfeited under any section of this code may, upon order of the trial court, be retained for official use in the following manner. Property which has been seized by an agency of the state may be retained for official state use. Property which has been seized by an agency of county, city, or urban-county government may be retained for official use by the government whose agency seized the property or for official state use. Property seized by any other unit of government may be retained only for official state use. The expenses for keeping and transferring such property shall be paid by the unit of government by which the property is retained.
- (2) Money which has been obtained or conferred in violation of any section of this code shall, upon conviction, be forfeited for the use of the state. This subsection shall not apply when, during the course of the proceeding in which the conviction is obtained, the person from whom said money was unlawfully acquired is identified.
 - (3) Property forfeited under any section of this code shall be disposed of in accordance with this section only after being advertised pursuant to KRS Chapter 424. This subsection shall not apply to property which is designed and suitable only for criminal use or to money forfeited under subsection (2) of this section.

- (4) The trial court shall remit the forfeiture of property when the lawful claimant:
- (a) Asserts his *or her* claim before disposition of the property pursuant to this section;
 - (b) Establishes his *or her* legal interest in the property; and
 - (c) Establishes that the unlawful use of the property was without his *or her* knowledge and consent. Subsection (4) shall not apply to a lienholder of record when the trial court elects to dispose of the property pursuant to subsection (1)(b) of this section.
- (5) For purposes of this section, "lawful claimant" means owner or lienholder of record.
- (6) Before property which has had its identity obscured in violation of KRS 514.120 may be sold or retained for official use as provided in this section, the court shall cause a serial or other identifying number to be placed thereon and a record of the number assigned shall be placed in the court order authorizing the sale or retention of the property. This number shall be assigned, whenever applicable, in consultation with the *Department of* Kentucky State Police and any other state or federal regulatory agency. The purchaser of the property shall be given a document stating that the property had been forfeited pursuant to law and that a number, shown on the document, has been assigned which shall be deemed as compliance of the owner with KRS 514.120. When property is returned to an owner pursuant to this section and its identity has been obscured by another person in violation of KRS 514.120, the court shall provide a document to the owner relieving him *or her* of liability for its continued possession. This document shall serve as evidence of compliance with KRS 514.120 by the owner or any person to whom he *or she* lawfully disposes of the property. This section shall not apply to any person after property has been sold or returned in compliance with this section who violates the provisions of KRS 514.120 with respect to that property.
- (7) Before forfeiture of any property under this section, it shall be the duty of the trial court to determine if a lawful owner or claimant to the property has been identified or is identifiable. If a lawful owner or claimant has been identified or is identifiable, the court shall notify the owner or claimant that the property is being held and specify a reasonable period of time during which the claim may be made or may, in lieu thereof, order the return of the property to the lawful owner or claimant. If the lawful owner or claimant does not assert his *or her* claim to the property after notification or if he *or she* renounces his *or her* claim to the property, the property shall be disposed of as provided in this section. It shall be the duty of all peace officers and other public officers or officials having knowledge of the lawful owner or claimant of property subject to forfeiture to report the same to the trial court before the act of forfeiture occurs.

Section 326. KRS 500.093 is amended to read as follows:

No court or law enforcement agency shall retain a firearm or ammunition for official use for the purpose of avoiding transfer of the firearm or ammunition to the *Department of* Kentucky State Police under KRS 237.090, 500.090, or other statute to avoid its being sold pursuant to KRS 16.220.

Section 327. KRS 514.120 is amended to read as follows:

- (1) A person is guilty of obscuring the identity of a machine or other property when he *or she*:
- (a) Removes, defaces, covers, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark, including property marked with a Social Security number or motor vehicle operator's license number for identification purposes, upon any automobile or other propelled vehicle, machine, or electrical or mechanical device, or other property (including any part thereof) with intent to render it or other property unidentifiable; or
 - (b) Possesses any automobile or other propelled vehicle, machine, or electrical or mechanical device, or other property (including any part thereof) knowing that the serial number or other identification number or mark, including property marked with a Social Security number for identification purposes, has been removed, defaced, covered, altered, destroyed, or otherwise obscured.
- (2) Possession of any automobile or other propelled vehicle, machine, or electrical or mechanical device, or other property (including any part thereof) on which the serial number or any other distinguishing identification number or mark, including property marked with a Social Security number or motor vehicle operator's license number for identification purposes, has been removed, defaced, covered, altered, destroyed, or otherwise obscured is prima facie evidence of knowledge of that fact.

- (3) A person in possession of any property which is otherwise in violation of this section may apply in writing to the **Department of** Kentucky State Police, through any law enforcement agency in the county of his *or her* residence, for assignment of a number for the property providing he *or she* can show that he *or she* is the lawful owner of the property pursuant to the provisions of this section, KRS 16.200, and 500.090. If a number is issued in conformity with the provisions of this section, KRS 16.200, and 500.090, then the person to whom it was issued and any person to whom the property is lawfully disposed of shall not be in violation of these sections. A person lawfully holding a certification issued pursuant to KRS 500.090 shall also be deemed in compliance with this section. This section shall apply only when the application has been filed by the defendant prior to arrest or authorization of a warrant of arrest for the defendant by a court.
- (4) Obscuring the identity of a machine or other property is a Class A misdemeanor unless the value of the property is three hundred dollars (\$300) or more, in which case it is a Class D felony.

Section 328. KRS 524.140 is amended to read as follows:

- (1) As used in this section:
- (a) "Defendant" means a person charged with a:
 - 1. Capital offense, Class A felony, Class B felony, or Class C felony; or
 - 2. Class D felony under KRS Chapter 510; and
 - (b) "Following trial" means after:
 - 1. The first appeal authorized by the Constitution of Kentucky in a criminal case has been decided; or
 - 2. The time for the first appeal authorized by the Constitution of Kentucky in a criminal case has lapsed without an appeal having been filed.
- (2) No item of evidence gathered by law enforcement, prosecutorial, or defense authorities that may be subject to deoxyribonucleic acid (DNA) evidence testing and analysis in order to confirm the guilt or innocence of a criminal defendant shall be disposed of prior to trial of a criminal defendant unless:
- (a) The prosecution has determined that the defendant will not be tried for the criminal offense;
 - (b) The prosecution has made a motion before the court in which the case would have been tried to destroy the evidence; and
 - (c) The court has, following an adversarial proceeding in which the prosecution and the defendant were heard, authorized the destruction of the evidence by court order.
- (3) No item of evidence gathered by law enforcement, prosecutorial, or defense authorities that may be subject to deoxyribonucleic acid (DNA) evidence testing and analysis in order to confirm the guilt or innocence of a criminal defendant shall be disposed of following the trial unless:
- (a) The evidence, together with DNA evidence testing and analysis results, has been presented at the trial, and the defendant has been found guilty, pled guilty, or entered an Alford plea at the trial;
 - (b) The evidence was not introduced at the trial, or if introduced at the trial was not the subject of DNA testing and analysis, and the defendant has been found guilty, pled guilty, or entered an Alford plea at the trial, and the trial court has ordered the destruction of the evidence after an adversarial hearing conducted upon motion of either the prosecution or the defendant;
 - (c) The trial resulted in the defendant being found not guilty or the charges were dismissed after jeopardy attached, whether or not the evidence was introduced at the trial or was subject to DNA testing and analysis or not, and the trial court ordered the destruction of the evidence after an adversarial hearing conducted upon motion of either the prosecution or the defendant; or
 - (d) The trial resulted in the dismissal of charges against the defendant, and the defendant may be subject to retrial, in which event the evidence shall be retained until after the retrial, which shall be considered a new trial for the purposes of this section.
- (4) The burden of proof for a motion to destroy evidence that may be subject to DNA testing and analysis shall be upon the party making the motion, and the court may permit the destruction of the evidence under this section upon good cause shown favoring its destruction.

- (5) It is recognized by the General Assembly that the DNA evidence laboratory testing and analysis procedure consumes and destroys a portion of the evidence or may destroy all of the evidence if the sample is small. The consuming and destruction of evidence during the laboratory analysis process shall not result in liability for its consumption or destruction if the following conditions are met:
- (a) The *Department of* Kentucky State Police laboratory uses a method of testing and analysis which preserves as much of the biological material or other evidence tested and analyzed as is reasonably possible; or
 - (b) If the *Department of* Kentucky State Police laboratory knows or reasonably believes that the entire sample of evidence to be tested and analyzed that the laboratory, prior to the testing or analysis of the evidence, notifies in writing the court which ordered the testing and analysis and counsel for all parties:
 - 1. That the entire sample of evidence may be destroyed by the testing and analysis;
 - 2. The possibility that another laboratory may be able to perform the testing and analysis in a less destructive manner with at least equal results;
 - 3. The name of the laboratory capable of performing the testing and analysis, the costs of testing and analysis, the advantages of sending the material to that other laboratory, and the amount of biological material or other evidence which might be saved by alternative testing and analysis; and
 - 4. The *Department of* Kentucky State Police laboratory follows the directive of the court with regard to the testing and analysis; or
 - (c) If the *Department of* Kentucky State Police laboratory knows or reasonably believes that so much of the biological material or evidence may be consumed or destroyed in the testing and analysis that an insufficient sample will remain for independent testing and analysis that the laboratory follows the procedure specified in paragraph (b) of this subsection.
- (6) Destruction of evidence in violation of this section shall be a violation of KRS 524.100.
- (7) Subject to KRS 422.285(6), the appropriate governmental entity shall retain any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. The governmental entity shall have the discretion to determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing and analysis.

Section 329. KRS 527.020 is amended to read as follows:

- (1) A person is guilty of carrying a concealed weapon when he *or she* carries concealed a firearm or other deadly weapon on or about his *or her* person.
- (2) Peace officers, when necessary for their protection in the discharge of their official duties; United States mail carriers when actually engaged in their duties; and agents and messengers of express companies, when necessary for their protection in the discharge of their official duties, may carry concealed weapons on or about their person.
- (3) Policemen directly employed by state, county, city, or urban-county governments may carry concealed deadly weapons on or about their person at all times within the Commonwealth of Kentucky, when expressly authorized to do so by the government employing the officer.
- (4) Persons, except those specified in subsection (5) of this section, licensed to carry a concealed deadly weapon pursuant to KRS 237.110 may carry a firearm or other concealed deadly weapon on or about their persons at all times within the Commonwealth of Kentucky, if the firearm or concealed deadly weapon is carried in conformity with the requirements of that section. Unless otherwise specifically provided by the Kentucky Revised Statutes or applicable federal law, no criminal penalty shall attach to carrying a concealed firearm or other deadly weapon with a permit at any location at which an unconcealed firearm or other deadly weapon may be constitutionally carried. No person or organization, public or private, shall prohibit a person licensed to carry a concealed deadly weapon from possessing a firearm, ammunition, or both, or other deadly weapon in his or her vehicle in compliance with the provisions of KRS 237.110 and 237.115. Any attempt by a person or organization, public or private, to violate the provisions of this subsection may be the subject of an action for appropriate relief or for damages in a Circuit Court or District Court of competent jurisdiction.

- (5) (a) The following persons, if they hold a license to carry a concealed deadly weapon pursuant to KRS 237.110, may carry a firearm or other concealed deadly weapon on or about their persons at all times and at all locations within the Commonwealth of Kentucky, without any limitation other than as provided in this subsection:
1. A Commonwealth's attorney or assistant Commonwealth's attorney;
 2. A county attorney or assistant county attorney;
 3. A justice or judge of the Court of Justice; and
 4. A retired or senior status justice or judge of the Court of Justice.
- (b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.
- (c) A person specified in this section who is issued a concealed deadly weapon license shall be issued a license which bears on its face the statement that it is valid at all locations within the Commonwealth of Kentucky and may have such other identifying characteristics as determined by the Department of *Kentucky* State Police.
- (6) (a) Except *as* provided in this subsection, the following persons may carry concealed deadly weapons on or about their person at all times and at all locations within the Commonwealth of Kentucky:
1. An elected sheriff and full-time and part-time deputy sheriffs certified pursuant to KRS 15.380 to 15.404 when expressly authorized to do so by the unit of government employing the officer;
 2. An elected jailer and a deputy jailer who has successfully completed Department of Corrections basic training and maintains his or her current in-service training when expressly authorized to do so by the jailer; and
 3. The department head or any employee of a corrections department in any jurisdiction where the office of elected jailer has been merged with the office of sheriff who has successfully completed Department of Corrections basic training and maintains his or her current in-service training when expressly authorized to do so by the unit of government by which he or she is employed.
- (b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.
- (7) (a) A full-time paid peace officer of a government agency from another state or territory of the United States or an elected sheriff from another territory of the United States may carry a concealed deadly weapon in Kentucky, on or off duty, if the other state or territory accords a Kentucky full-time paid peace officer and a Kentucky elected sheriff the same rights by law. If the other state or territory limits a Kentucky full-time paid peace officer or elected sheriff to carrying a concealed deadly weapon while on duty, then that same restriction shall apply to a full-time paid peace officer or elected sheriff from that state or territory.
- (b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.

- (8) A firearm or other deadly weapon shall not be deemed concealed on or about the person if it is located in a glove compartment, regularly installed in a motor vehicle by its manufacturer, regardless of whether said compartment is locked, unlocked, or does not have a locking mechanism. No person or organization, public or private, shall prohibit a person from keeping a firearm or ammunition, or both, or other deadly weapon in a glove compartment of a vehicle in accordance with the provisions of this subsection. Any attempt by a person or organization, public or private, to violate the provisions of this subsection may be the subject of an action for appropriate relief or for damages in a Circuit Court or District Court of competent jurisdiction.
- (9) Carrying a concealed weapon is a Class A misdemeanor, unless the defendant has been previously convicted of a felony in which a deadly weapon was possessed, used, or displayed, in which case it is a Class D felony.

Section 330. KRS 620.030 is amended to read as follows:

- (1) Any person who knows or has reasonable cause to believe that a child is dependent, neglected or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or the **Department of** Kentucky State Police; the cabinet or its designated representative; the Commonwealth's attorney or the county attorney; by telephone or otherwise. Any supervisor who receives from an employee a report of suspected dependency, neglect or abuse shall promptly make a report to the proper authorities for investigation. If the cabinet receives a report of abuse or neglect allegedly committed by a person other than a parent, guardian or person exercising custodial control or supervision, the cabinet shall refer the matter to the Commonwealth's attorney or the county attorney and the local law enforcement agency or the **Department of** Kentucky State Police. Nothing in this section shall relieve individuals of their obligations to report.
- (2) Any person, including but not limited to a physician, osteopathic physician, nurse, teacher, school personnel, social worker, coroner, medical examiner, child-caring personnel, resident, intern, chiropractor, dentist, optometrist, emergency medical technician, paramedic, health professional, mental health professional, peace officer or any organization or agency for any of the above, who knows or has reasonable cause to believe that a child is dependent, neglected or abused, regardless of whether the person believed to have caused the dependency, neglect or abuse is a parent, guardian, person exercising custodial control or supervision or another person, or who has attended such child as a part of his **or her** professional duties shall, if requested, in addition to the report required in subsection (1) of this section, file with the local law enforcement agency or the **Department of** Kentucky State Police or the Commonwealth's or county attorney, the cabinet or its designated representative within forty-eight (48) hours of the original report a written report containing:
 - (a) The names and addresses of the child and his **or her** parents or other persons exercising custodial control or supervision;
 - (b) The child's age;
 - (c) The nature and extent of the child's alleged dependency, neglect or abuse (including any previous charges of dependency, neglect or abuse) to this child or his **or her** siblings;
 - (d) The name and address of the person allegedly responsible for the abuse or neglect; and
 - (e) Any other information that the person making the report believes may be helpful in the furtherance of the purpose of this section.
- (3) The cabinet upon request shall receive from any agency of the state or any other agency, institution or facility providing services to the child or his **or her** family, such cooperation, assistance and information as will enable the cabinet to fulfill its responsibilities under KRS 620.030, 620.040, and 620.050.

Section 331. KRS 620.040 is amended to read as follows:

- (1) (a) Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), the recipient of the report shall immediately notify the cabinet or its designated representative, the local law enforcement agency or **the Department of** Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report unless they are the reporting source.
- (b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk determined, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and

to provide family support. A report of sexual abuse shall be considered high risk and shall not be referred to any other community agency.

- (c) The cabinet shall, within seventy-two (72) hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or *the Department of Kentucky State Police* concerning the action that has been taken on the investigation.
- (d) If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall immediately notify the Commonwealth's or county attorney and the local law enforcement agency or *the Department of Kentucky State Police*.
- (2) (a) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall immediately notify the cabinet or its designated representative.
- (b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse shall be considered high risk and shall not be referred to any other community agency.
- (c) The cabinet need not notify the local law enforcement agency or *the Department of Kentucky State Police* or county attorney or Commonwealth's attorney of reports made under this subsection.
- (3) If the cabinet or its designated representative receives a report of abuse by a person other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall immediately notify the local law enforcement agency or *the Department of Kentucky State Police* and the Commonwealth's or county attorney of the receipt of the report and its contents and they shall investigate the matter. The cabinet or its designated representative shall participate in an investigation of noncustodial physical abuse or neglect at the request of the local law enforcement agency or the *Department of Kentucky State Police*. The cabinet shall participate in all investigations of reported or suspected sexual abuse of a child.
- (4) School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.
- (5) (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be requested from, and may be issued by, the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.
- (b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he *or she* is returned to the persons having custody of him *or her*, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.
- (c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.
- (d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he or she shall provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.
- (6) To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with the child shall be conducted at a children's advocacy center.
- (7) (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.

- (b) Membership of the multidisciplinary team shall include, but shall not be limited to, social service workers employed by the Cabinet for Health and Family Services and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, children's advocacy center staff, mental health professionals, medical professionals, victim advocates, educators, and other related professionals, as deemed appropriate.
- (c) The multidisciplinary team may review child sexual abuse cases referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child, or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.
- (d) The team shall hold regularly scheduled meetings if new reports of sexual abuse are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed.
- (e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases.
- (f) Multidisciplinary team members and anyone invited by the multidisciplinary team to participate in a meeting shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members and others attending meetings shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.
- (g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.
- (h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.
- (i) To the extent practicable, multidisciplinary teams shall be staffed by the local children's advocacy center.

Section 332. KRS 620.045 is amended to read as follows:

- (1) The secretaries of the Cabinet for Health and Family Services and the Justice *and Public Safety* Cabinet are authorized to make state grants and other fund allocations to assist nonprofit corporations in the establishment and operation of regional children's advocacy centers.
- (2) To be eligible for grants from any state government entity, a children's advocacy center shall meet the statutory definition of a children's advocacy center as provided in this chapter and shall operate consistent with administrative regulations promulgated by the Cabinet for Health and Family Services in accordance with KRS Chapter 13A.

Section 333. KRS 635.545 is amended to read as follows:

- (1) The Department of Juvenile Justice shall maintain on file the names and identities of program participants for a period of fifteen (15) years following their participation in the program. The names and identities shall not be disclosed except for the purposes allowed in this section.
- (2) On a biennial basis, the Department of Juvenile Justice shall request from the Administrative Office of the Courts and the *Department of* Kentucky State Police information concerning whether any of the individuals who participated in the program have been arrested, tried, convicted, or incarcerated for any offense under KRS Chapter 510, KRS 530.020, 530.064(1)(a), 531.310, or any other criminal offense.
- (3) Each two (2) years the Department of Juvenile Justice shall compile the information obtained and present it to the Governor, the Legislative Research Commission, and the Supreme Court. The report shall not contain the names of any of the individual participants but shall contain identifying information which may assist in the evaluation of the program and in determination of whether participants have engaged in further criminal behavior as juveniles or adults.

Section 334. The following KRS sections are repealed:

15A.042 Office of Criminal Justice Council -- Divisions -- Duties -- Executive director.
Legislative Research Commission PDF Version

- 15A.050 General counsel.
- 15A.120 Transfer of functions to cabinet.
- 15A.130 Transfer of funds, credits, assets, etc., to cabinet.
- 15A.140 Existing rules and regulations effective until modified or repealed.
- 15A.170 Administrative support services -- Other related programs.
- 15A.180 Retention and protection of reports, documents, records, etc.
- 17.080 Justice Cabinet may make rules and direct proceedings.
- 17.1531 Study on racial bias in capital sentencing.
- 30A.055 Automated warrant system.
- 403.783 Model law enforcement domestic violence policy and procedures manual --Distribution -- Agency submission to Justice Cabinet -- Assistance by cabinet when policy inadequate.
- 439.302 Commission on Correction and Community Service -- Appointment -- Terms -- Expenses.
- 439.304 Meetings, powers, and duties of commission.
- 439.306 Authority of commission and members.

Section 335. In order to reflect the reorganization effectuated by this Act, the reviser of statutes shall replace references in the Kentucky Revised Statutes to the agencies, subagencies, and officers affected by this Act with references to the appropriate successor agencies, subagencies, and officers established by this Act. The reviser of statutes shall base these actions on the functions assigned to the new entities by this Act and may consult with officers of the affected agencies, or their designees, to receive suggestions.

Section 336. KRS 12.028 or any other provision of law to the contrary notwithstanding, the General Assembly confirms the portion of the Governor's Executive Order 2006-496, filed on May 4, 2006, and Executive Order 2006-805, dated July 10, 2006, relating to the Justice and Public Safety Cabinet, to the extent they are not otherwise confirmed or superseded by this Act.

Approved March 23, 2007.

CHAPTER 86

(SB 10)

AN ACT relating to heating, ventilation, and air conditioning and making an appropriation therefor.

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

SECTION 1. A NEW SECTION OF KRS 198B.650 TO 198B.689 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding KRS 198B.030 to the contrary, any person who installs an initial heating, ventilation, or air conditioning system shall apply for a permit prior to beginning the installation. No installation shall begin before the application for the permit has been filed. In no event, however, shall a person exempt under KRS 198B.674 be required to possess or show proof of a heating, ventilation, or air conditioning license in order to obtain the permit required by this section.*
- (2) *The applicant for a heating, ventilation, and air conditioning permit, by the act of applying for the permit, shall be deemed to consent to inspection of the installation by authorized inspectors of the Commonwealth of Kentucky and of the relevant city, county, urban-county, charter county, unified local government, or consolidated local government.*
- (3) *The permit shall give:*
 - (a) *The name of the person performing the work;*
 - (b) *The full extent of the work to be performed;*
 - (c) *The name of the owner or owners of the property where the work is to be performed;*

- (d) *The location of the property where the work is to be performed, including county and street address; and*
- (e) *The master license number, if the work is required to be performed by a master heating, ventilation, and air conditioning contractor.*
- (4) *No permit shall be required for any installation performed on a manufactured home as defined by KRS 227.550(7), by a manufactured home retailer licensed pursuant to KRS 227.610, or by a manufacturer as defined by KRS 227.550(9).*
- (5) *No permit or inspection shall be required for the installation of window unit air conditioners or space heaters.*
- (6) *No permit or inspection shall be required for the installation of a heating, ventilation, or air conditioning system except in buildings designed for human occupancy.*

SECTION 2. A NEW SECTION OF KRS 198B.650 TO 198B.689 IS CREATED TO READ AS FOLLOWS:

- (1) *No person, firm, or corporation shall use, continue to use, or permit the use of any heating, ventilation, or air conditioning system that an authorized inspector or the inspector's employee or agent determines was not installed in accordance with the Uniform State Building Code, the Uniform State Residential Code, and the referenced standards contained in the respective codes.*
- (2) *If a permit is required by Section 1 of this Act for the installation of a heating, ventilation, or air conditioning system, no firm, person, or corporation shall use, continue to use, or permit the use of the heating, ventilation, or air conditioning system unless the permit has been obtained or applied for.*
- (3) *Any inspection required by Section 1 of this Act shall be scheduled with the property owner or owners or their agent or agents at least one (1) business day in advance and shall be completed within three (3) business days of the scheduled inspection.*

SECTION 3. A NEW SECTION OF KRS 198B.650 TO 198B.689 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall promulgate administrative regulations to establish a reasonable schedule of fees to implement the program. The fees shall not exceed the actual costs for the administration of the program. The board shall also establish heating, ventilation, and air conditioning inspection protocols that ensure timely inspections and minimal interruption to the construction process.*
- (2) *The office, with the approval of the board, upon the request of any individual local governing entity or combination of entities with existing heating, ventilation, and air conditioning permitting and inspection programs as of January 1, 2007, shall authorize them to administer, carry out, and enforce the rules and regulations of the office relating to heating, ventilation, and air conditioning installations, issue permits, and make inspections within their respective boundaries, or perform any portion of these functions. Nothing in Sections 1 to 8 of this Act shall prohibit these entities from continuing to include major repairs or substantial alterations to a heating, ventilation, or air conditioning system within their permitting and inspection program in the absence of a state requirement, if major repairs or substantial alterations were included in the entities' inspection program prior to January 1, 2007. The office, with the approval of the board, may authorize any other individual local government entities or combination of entities to administer, carry out, and enforce the rules and regulations of the office relating to heating, ventilation, and air conditioning installations, issue permits, and make inspections within their respective boundaries, or perform any portion of those functions. When authorization is granted, the office shall enter into contractual arrangements with the local governing entities, which shall remain in effect as long as the local entity continues to operate its program pursuant to guidelines adopted by the board. A heating, ventilation, and air conditioning permit issued by an authorized local governing entity shall be considered a permit issued by the office, and all fees collected by the authorized local government related to the same shall be retained by that local government.*
- (3) *Any local governing entity enforcing the permitting and inspection requirements of KRS 198B.650 to 198B.689 pursuant to subsection (2) of this section may appoint and fix the compensation of the local governing entity's heating, ventilation, and air conditioning inspectors. No person shall perform the duties of a heating, ventilation, and air conditioning inspector unless he or she has at least six (6) years'*

experience as a licensed heating, ventilation, and air conditioning journeyman mechanic or a licensed master heating, ventilation, and air conditioning contractor, unless he or she is a certified building inspector who has successfully passed the examinations relating to heating, ventilation, and air conditioning systems. At the time of employment the heating, ventilation, and air conditioning inspector shall be licensed or certified in accordance with the provisions of KRS 198B.650 to 198B.689.

- (4) *No local governing entity may impose any other additional heating, ventilation, and air conditioning inspection or permit requirements, or establish any local inspection or permitting program, unless those provisions were in place before January 1, 2007.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 198B.650 TO 198B.689 IS CREATED TO READ AS FOLLOWS:

All fees and fines collected and paid into the State Treasury shall be credited to a revolving trust and agency account and shall be used only for the administration and enforcement of KRS 198B.650 to 198B.689 and the repayment of moneys borrowed from surplus trust and agency accounts of the office. The moneys in the account are hereby appropriated by the General Assembly for the purposes set forth in KRS 198B.650 to 198B.689, and shall not lapse at the close of the fiscal year.

SECTION 5. A NEW SECTION OF KRS 198B.650 TO 198B.689 IS CREATED TO READ AS FOLLOWS:

- (1) *For the purpose of enforcing the provisions of KRS 198B.650 to 198B.689, officers, agents, and inspectors of the office or an authorized local government shall have the power and authority to enter upon permitted premises at all reasonable times with the consent of the property owner in order to make inspections, interview all persons, and request proof of heating, ventilation, and air conditioning licenses, installation permits, and other evidence of compliance. Officers, agents, and inspectors of the office or an authorized local government shall have the authority to issue a stop-work order to any owner, agent, or occupant of real property whenever the heating, ventilation, and air conditioning system under inspection is found to be in violation of KRS 198B.650 to 198B.689 or the Uniform State Building Code's heating, ventilation, and air conditioning mechanical sections.*
- (2) *Notwithstanding the existence or pursuit of any other civil or criminal penalties, the office and its officers, agents, and inspectors are authorized to institute and maintain actions to restrain and enjoin any violation of KRS 198B.650 to 198B.689, the Uniform State Building Code, the Uniform State Residential Code, or the rules or the administrative regulations of the office relating thereto.*
- (3) *City and county attorneys, Commonwealth's attorneys, and the Attorney General may, within their respective jurisdictions, represent the office and its officers, agents, and inspectors in the enforcement of provisions of KRS 198B.650 to 198B.689, the Uniform State Residential Code, and the Uniform State Building Code.*

SECTION 6. A NEW SECTION OF KRS 198B.650 TO 198B.689 IS CREATED TO READ AS FOLLOWS:

- (1) *The Circuit Court where a violation occurs shall have jurisdiction and venue in all civil and injunctive actions instituted by the office for the enforcement of the provisions of KRS 198B.650 to 198B.689 and orders issued thereunder.*
- (2) *The District Court where a violation occurs shall have jurisdiction and venue in all criminal actions for the enforcement of the provisions of KRS 198B.650 to 198B.689, the Uniform State Building Code, the Uniform State Residential Code, and orders issued thereunder.*

SECTION 7. A NEW SECTION OF KRS 198B.650 TO 198B.689 IS CREATED TO READ AS FOLLOWS:

- (1) *If an installation for which a permit is required does not meet the requirements of the Uniform State Building Code or the Uniform State Residential Code, whichever is applicable, or if the property owner refuses to allow an inspection, the inspector shall refuse to approve the work covered by the permit. The office or authorized local government may prohibit the continued use of a heating, ventilation, and air conditioning system that an authorized inspector determines was improperly installed or altered if continued use threatens human life or if the property owner refused to allow an inspection.*
- (2) *An applicant aggrieved by an action of an inspector or the office may request a hearing in accordance with KRS Chapter 13B.*

SECTION 8. A NEW SECTION OF KRS 198B.650 TO 198B.689 IS CREATED TO READ AS FOLLOWS:

- (1) *The office shall appoint and assign heating, ventilation, and air conditioning inspectors to each county subject to the provisions of KRS 198B.650 to 198B.689 and in numbers sufficient to implement the provisions of KRS 198B.650 to 198B.689.*
- (2) *No person shall be appointed as a heating, ventilation, and air conditioning inspector unless he or she has at least six (6) years' experience as a licensed heating ventilation, and air conditioning journeyman mechanic, or a licensed master heating, ventilation, and air conditioning contractor, unless he or she is a certified building inspector who has successfully passed the examinations relating to heating, ventilation, and air conditioning systems. At the time of his or her appointment the inspector shall be licensed or certified in accordance with the provisions of KRS 198B.650 to 198B.689.*

Section 9. KRS 198B.650 is amended to read as follows:

As used in KRS 198B.650 to 198B.689, unless the context requires otherwise:

- (1) "Air conditioning or cooling system" means a system in which heat is removed from air, surrounding surfaces, or both;
- (2) "Apprentice heating, ventilation, and air conditioning mechanic" means an individual in the process of learning the heating, ventilation, and air conditioning trade who assists and is under the supervision of a master heating, ventilation, and air conditioning contractor and a journeyman heating, ventilation, and air conditioning mechanic;
- (3) "Board" means the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors;
- (4) "Burner service" means the servicing of oil or gas burners used for heating air or water for purposes other than the transmission of heat;
- (5) "Certificate" means a document issued by the board to an apprentice heating, ventilation, and air conditioning mechanic to assist a master heating, ventilation, and air conditioning contractor or a journeyman heating, ventilation, or air conditioning mechanic;
- (6) "Executive director" means the executive director of the Office of Housing, Buildings and Construction;
- (7) "Office" means the Office of Housing, Buildings and Construction;
- (8) "Heating system" means a system in which heat is transmitted by radiation, conduction, convection, or a combination of any of these methods to air, surrounding surfaces, or both. "Heating system" does not include fireplaces and free-standing stoves not incorporated into a primary heating system, electric thermal storage units, electric ceiling cable heating systems, or electric baseboard heating units;
- (9) "Hydronic system" means a heating and cooling system using liquids to transmit or remove heat;
- (10) *"Initial heating, ventilation, or air conditioning system" means the first or original heating, ventilation, or air conditioning system installed in a building;*
- (11) "Journeyman heating, ventilation, and air conditioning mechanic" means an individual who is licensed by the board to perform heating, ventilation, and air conditioning work under the supervision, direction, and responsibility of a master heating, ventilation, and air conditioning contractor;
- (12)~~(11)~~ "Maintenance person or maintenance engineer" means a person who is a regular and bona fide full-time employee or agent of a property owner, property lessor, property management company, or firm, not in the heating, ventilating, and air conditioning business that has jurisdiction of property where the routine maintenance of heating, ventilating, and air conditioning is being performed, provided the maintenance shall not include replacement of heating, ventilation, or air conditioning systems;
- (13) *"Major repair" means the complete replacement of any of the following heating, ventilation, or air conditioning equipment:*
 - (a) *Furnaces;*
 - (b) *Condensing units;*
 - (c) *Heat pumps;*

- (d) *Fan coil units;*
- (e) *Chiller systems; or*
- (f) *Heating boiler systems not covered by KRS Chapter 236;*
- (14)~~((12))~~ "Master heating, ventilation, and air conditioning contractor" means a heating, ventilation, and air conditioning contractor who is licensed by the board to advertise and practice heating, ventilation, and air conditioning contracting in this Commonwealth;
- (15) *"Permit" means a document issued by the office or its authorized agent allowing the installation of an original heating, ventilation, or air conditioning system;*
- (16)~~((13))~~ "Practice of heating, ventilation, and air conditioning contracting" means the installation, maintenance, altering, remodeling, or repair of heating systems, ventilation systems, hydronic systems, burner service, or cooling systems;
- (17)~~((14))~~ "Routine maintenance of heating, ventilation, or air conditioning" means the routine and periodic servicing of heating, ventilation, and air conditioning systems, including cleaning, inspection, and adjustments to insure the proper operation, and the removal and replacement of component parts. "Routine maintenance of heating, ventilation, or air conditioning" shall not include the installation of complete new heating, ventilation, or air conditioning systems; and
- (18)~~((15))~~ "Ventilation system" means a natural or mechanical system of supplying air to or removing air from any space.

Section 10. KRS 198B.990 is amended to read as follows:

- (1) Any person who violates any provision of KRS 198B.140, *of Section 1 or 2 of this Act*, or of the Uniform State Building Code, *the Uniform State Residential Code*, or any directive or order issued pursuant thereto, shall be fined not less than ten dollars (\$10) nor more than one thousand dollars (\$1,000). Each day the violation continues shall constitute a separate offense.
- (2) Any person who violates the provisions of KRS 198B.310 to 198B.330 shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), or be imprisoned for not more than one (1) year, or both.
- (3) Any person who violates any provision of KRS 198B.410 to 198B.540, or regulation issued thereunder, shall be fined a sum of five hundred dollars (\$500) for each offense.

Section 11. Funds for the initial administration of this Act, following July 1, 2008, and to the extent fee income is insufficient to meet actual costs as determined by the chief budget officer for the office, with the approval of the board, shall be borrowed from surplus trust and agency accounts of the office and repaid without interest over no more than the succeeding two (2) fiscal years.

Section 12. Sections 1, 3, 4, 6, 8, 9, 10, and 11 of this Act shall take effect July 1, 2008. Sections 2, 5, and 7 shall take effect January 1, 2009.

Approved March 23, 2007.

CHAPTER 87

(SB 175)

AN ACT relating to providing claims experience data to large group health benefit plans.

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

Section 1. KRS 304.17A-846 is amended to read as follows:

- (1) Any insurer issuing or delivering group health benefit plans in the Commonwealth shall provide to an employer-organized association health benefit plan, within thirty (30) calendar days after a written request, the information relating to its health benefit plan that has been requested, including but not limited to the following information for the previous three (3) years or for the entire period of coverage, whichever is shorter:
 - (a) Aggregate claims experience by month, including claims experience for pharmacy benefits;
 - (b) Total premiums paid by month;

- (c) Total number of insureds on a monthly basis by coverage tier; and
- (d) Sufficient detailed claims information to permit the employer-organized association to verify eligibility and participation of the groups and individuals participating in the employer-organized association program.

The office shall, by July 15, 2005, promulgate administrative regulations to implement the provisions of this section and define the extent that individual information shall be provided.

- (2) This section shall not require the insurer to disclose any nonpublic personal health information without the written consent of the individual who is the subject of the information, as required by administrative regulations promulgated by the executive director. However, nonpublic personal health information may be provided to the employer-organized association health benefit plan ***and large group health benefit plan with fifty-one (51) or more enrolled employees*** as a covered entity to cover entity transfer under the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. sec. 300gg et seq., provided that the health benefit plan certifies to the insurer that it has adopted HIPAA-required safeguards and will treat the nonpublic personal health information in accordance with HIPAA standards.
- (3) ***Any insurer issuing or delivering group health benefit plans in the Commonwealth shall provide to a large group health benefit plan with fifty-one (51) or more enrolled employees, within thirty (30) calendar days after receipt of a written request, the following information relating to its health benefit plan:***
 - (a) ***Total premiums paid by month;***
 - (b) ***Total number of insureds on a monthly basis by coverage tier;***
 - (c) ***Additional utilization data to help the employer measure costs in the following areas:***
 - 1. ***Detailed prescription drug utilization information, including generic versus brand utilization;***
 - 2. ***Number of office visits to primary care providers and specialists;***
 - 3. ***Number of emergency room visits;***
 - 4. ***Number of inpatient and outpatient hospitalizations;***
 - 5. ***Number of members utilizing deductible and out-of-pocket expenses by cost level; and***
 - 6. ***A list of the most prevalent disease categories.***
- (4) ***Insurers shall not be required to produce reports requested pursuant to subsection (3) of this section more than twice annually.***

Approved March 23, 2007.

CHAPTER 88

(HB 50)

AN ACT relating to local school board members.

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

Section 1. KRS 160.280 is amended to read as follows:

- (1) Members of boards of education shall receive no salaries, but members of boards of education may receive a per diem of seventy-five dollars (\$75) in any calendar year, and their actual expenses for each regular or special meeting attended. Members shall receive this same per diem for training required by KRS 160.180. In no case shall the expenses incurred within the district or per diem of any member exceed ***three thousand dollars (\$3,000)***~~two thousand dollars (\$2,000))~~ in any calendar year.
- (2) ~~[Notwithstanding the provisions of subsection (1) of this section, members of boards of education in counties containing a city of the first class wherein a merger pursuant to KRS 160.041 shall have been accomplished and members elected from the divisions and in the manner prescribed by KRS 160.210(5) shall receive a per diem of seventy five dollars (\$75), and may be reimbursed for other actual and necessary expenditures incurred in the district in the performance of their duties authorized by the board. Members shall receive this same per~~

~~diem for training required by KRS 160.180. In no case shall the expenses incurred within the district or per diem of any member exceed three thousand dollars (\$3,000) per calendar year.~~

~~(3)~~ Members of boards of education may be reimbursed for actual and necessary expenditures incurred outside the district in the performance of their duties authorized by the board.

~~(3)~~~~(4)~~ All claims shall be made out according to law and filed with the secretary of the board and shall be approved and paid as other claims against the board.

~~(4)~~~~(5)~~ Board members shall be eligible to participate in any group medical or dental insurance plan provided to employees of the district pursuant to KRS 161.158. Participating board members shall pay the full cost of any premium required for their participation in the plan.

Section 2. KRS 161.158 is amended to read as follows:

- (1) (a) Each district board of education may form its employees into a group or groups or recognize existing groups for the purpose of obtaining the advantages of group life, disability, medical, and dental insurance, or any group insurance plans to aid its employees including the state employee health insurance group as described in KRS 18A.225, as long as the employees continue to be employed by the board of education. Medical and dental group insurance plans obtained under authority of this section may include insurance benefits for the families of the insured group or groups of employees. Any district board of education may pay all or part of the premium on the policies, and may deduct from the salaries of the employees that part of the premium which is to be paid by them and may contract with the insurer to provide the above benefits. As permitted in KRS 160.280~~(4)~~~~(5)~~, board members shall be eligible to participate in any group medical or dental insurance provided by the district for employees.
- (b) If a district board of education participates in the state employee health insurance program, as described in KRS 18A.225, for its active employees and terminates participation and there is a state appropriation approved by the General Assembly for the employer's contribution for active employees' health insurance coverage, neither the board of education nor the employees shall receive the state-funded contribution after termination from the state employee health insurance program.
- (2) Each district board of education shall adopt policies or regulations which will provide for deductions from salaries of its employees or groups of employees whenever a request is presented to the board by said employees or groups thereof. The deductions shall be made from salaries earned in at least eight (8) different pay periods, and shall be remitted to the appropriate organization or association as specified by the employees within thirty (30) days following the deduction provided the district has received appropriate invoices or necessary documentation. The deductions may be made for, but are not limited to, membership dues, tax-sheltered annuities, and group insurance premiums. With the exception of membership dues, the board shall not be required to make more than one (1) remittance of amounts deducted during a pay period for a separate type of deduction. Health insurance, life insurance, and tax-sheltered annuities shall be interpreted as separate types of deductions. When amounts have been correctly deducted and remitted by the board, the board shall bear no further responsibility or liability for subsequent transaction.
- (3) Payments and deductions made by the board of education under the authority of this section are presumed to be for services rendered and for the benefit of the common schools, and the payments and deductions shall not affect the eligibility of any school system to participate in the public school funding program as established in KRS Chapter 157.

Section 3. KRS 18A.225 is amended to read as follows:

- (1) (a) The term "employee" for purposes of this section means:
 1. Any person, including an elected public official, who is regularly employed by any department, office, board, agency, or branch of state government; or by a public postsecondary educational institution; or by any city, urban-county, charter county, county, or consolidated local government, whose legislative body has opted to participate in the state-sponsored health insurance program pursuant to KRS 79.080; and who is either a contributing member to any one (1) of the retirement systems administered by the state, including but not limited to the Kentucky Retirement Systems, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, or the Judicial Retirement Plan; or is receiving a contractual contribution from the state toward a retirement plan; or, in the case of a public postsecondary education institution, is an individual participating in an optional retirement plan authorized by KRS 161.567;

2. Any certified or classified employee of a local board of education;
 3. ***Any elected member of a local board of education;***
 4. Any person who is a present or future recipient of a retirement allowance from the Kentucky Retirement Systems, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, the Judicial Retirement Plan, or the Kentucky Community and Technical College System's optional retirement plan authorized by KRS 161.567, except that a person who is receiving a retirement allowance and who is age sixty-five (65) or older shall not be included, with the exception of persons covered under KRS 61.702(4)(c), unless he or she is actively employed pursuant to subparagraph 1. of this paragraph; and
 - ~~5.4.4~~ Any eligible dependents and beneficiaries of participating employees and retirees who are entitled to participate in the state-sponsored health insurance program;
- (b) The term "health benefit plan" for the purposes of this section means a health benefit plan as defined in KRS 304.17A-005;
 - (c) The term "insurer" for the purposes of this section means an insurer as defined in KRS 304.17A-005; and
 - (d) The term "managed care plan" for the purposes of this section means a managed care plan as defined in KRS 304.17A-500.
- (2) (a) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more insurers authorized to do business in this state, a group health benefit plan that may include but not be limited to health maintenance organization (HMO), preferred provider organization (PPO), point of service (POS), and exclusive provider organization (EPO) benefit plans encompassing all or any class or classes of employees. With the exception of employers governed by the provisions of KRS Chapters 16, 18A, and 151B, all employers of any class of employees or former employees shall enter into a contract with the Personnel Cabinet prior to including that group in the state health insurance group. The contracts shall include but not be limited to designating the entity responsible for filing any federal forms, adoption of policies required for proper plan administration, acceptance of the contractual provisions with health insurance carriers or third-party administrators, and adoption of the payment and reimbursement methods necessary for efficient administration of the health insurance program. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994, and shall include a mail-order drug option as provided in subsection (13) of this section. All employees and other persons for whom the health care coverage is provided or made available shall annually be given an option to elect health care coverage through a self-funded plan offered by the Commonwealth or, if a self-funded plan is not available, from a list of coverage options determined by the competitive bid process under the provisions of KRS 45A.080, 45A.085, and 45A.090 and made available during annual open enrollment.
 - (b) The policy or policies shall be approved by the executive director of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws.
 - (c) Any carrier bidding to offer health care coverage to employees shall agree to provide coverage to all members of the state group, including active employees and retirees and their eligible covered dependents and beneficiaries, within the county or counties specified in its bid. Except as provided in subsection (18) of this section, any carrier bidding to offer health care coverage to employees shall also agree to rate all employees as a single entity, except for those retirees whose former employers insure their active employees outside the state-sponsored health insurance program.
 - (d) Any carrier bidding to offer health care coverage to employees shall agree to provide enrollment, claims, and utilization data to the Commonwealth in a format specified by the Personnel Cabinet with the understanding that the data shall be owned by the Commonwealth; to provide data in an electronic form and within a time frame specified by the Personnel Cabinet; and to be subject to penalties for noncompliance with data reporting requirements as specified by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions to protect the confidentiality of each individual employee; however,

confidentiality assertions shall not relieve a carrier from the requirement of providing stipulated data to the Commonwealth.

- (e) The Personnel Cabinet shall develop the necessary techniques and capabilities for timely analysis of data received from carriers and, to the extent possible, provide in the request-for-proposal specifics relating to data requirements, electronic reporting, and penalties for noncompliance. The Commonwealth shall own the enrollment, claims, and utilization data provided by each carrier and shall develop methods to protect the confidentiality of the individual. The Personnel Cabinet shall include in the October annual report submitted pursuant to the provisions of KRS 18A.226 to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, an analysis of the financial stability of the program, which shall include but not be limited to loss ratios, methods of risk adjustment, measurements of carrier quality of service, prescription coverage and cost management, and statutorily required mandates. If state self-insurance was available as a carrier option, the report also shall provide a detailed financial analysis of the self-insurance fund including but not limited to loss ratios, reserves, and reinsurance agreements.
 - (f) If any agency participating in the state-sponsored employee health insurance program for its active employees terminates participation and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, then neither the agency nor the employees shall receive the state-funded contribution after termination from the state-sponsored employee health insurance program.
 - (g) Any funds in flexible spending accounts that remain after all reimbursements have been processed shall be transferred to the credit of the state-sponsored health insurance plan's appropriation account.
 - (h) Each entity participating in the state-sponsored health insurance program shall provide an amount at least equal to the state contribution rate for the employer portion of the health insurance premium. For any participating entity that used the state payroll system, the employer contribution amount shall be equal to but not greater than the state contribution rate.
- (3) The premiums may be paid by the policyholder:
- (a) Wholly from funds contributed by the employee, by payroll deduction or otherwise;
 - (b) Wholly from funds contributed by any department, board, agency, public postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government; or
 - (c) Partly from each, except that any premium due for health care coverage or dental coverage, if any, in excess of the premium amount contributed by any department, board, agency, postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government for any other health care coverage shall be paid by the employee.
- (4) If an employee moves his place of residence or employment out of the service area of an insurer offering a managed health care plan, under which he has elected coverage, into either the service area of another managed health care plan or into an area of the Commonwealth not within a managed health care plan service area, the employee shall be given an option, at the time of the move or transfer, to change his or her coverage to another health benefit plan.
- (5) No payment of premium by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall be considered a proper cost of administration.
- (6) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, and continuation of insurance or coverage after retirement.
- (7) Group rates under this section shall be made available to the disabled child of an employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

- (8) The health care contract or contracts for employees shall be entered into for a period of not less than one (1) year.
- (9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of State Health Insurance Subscribers to advise the secretary or his designee regarding the state-sponsored health insurance program for employees. The secretary shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven (7) Supreme Court districts, members representing state government from each of the seven (7) Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, two (2) members representing the Kentucky Teachers' Retirement System, and three (3) members at large. The secretary shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees, two (2) members from a list of five (5) names submitted by the Kentucky Association of Counties, two (2) members from a list of five (5) names submitted by the Kentucky League of Cities, and two (2) members from a list of names consisting of five (5) names submitted by each state employee organization that has two thousand (2,000) or more members on state payroll deduction. The advisory committee shall be appointed in January of each year and shall meet quarterly.
- (10) Notwithstanding any other provision of law to the contrary, the policy or policies provided to employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of employees or their dependents.
- (11) Interruption of an established treatment regime with maintenance drugs shall be grounds for an insured to appeal a formulary change through the established appeal procedures approved by the Office of Insurance, if the physician supervising the treatment certifies that the change is not in the best interests of the patient.
- (12) Any employee who is eligible for and elects to participate in the state health insurance program as a retiree, or the spouse or beneficiary of a retiree, under any one (1) of the state-sponsored retirement systems shall not be eligible to receive the state health insurance contribution toward health care coverage as a result of any other employment for which there is a public employer contribution. This does not preclude a retiree and an active employee spouse from using both contributions to the extent needed for purchase of one (1) state sponsored health insurance policy for that plan year.
- (13)
 - (a) The policies of health insurance coverage procured under subsection (2) of this section shall include a mail-order drug option for maintenance drugs for state employees. Maintenance drugs may be dispensed by mail order in accordance with Kentucky law.
 - (b) A health insurer shall not discriminate against any retail pharmacy located within the geographic coverage area of the health benefit plan and that meets the terms and conditions for participation established by the insurer, including price, dispensing fee, and copay requirements of a mail-order option. The retail pharmacy shall not be required to dispense by mail.
 - (c) The mail-order option shall not permit the dispensing of a controlled substance classified in Schedule II.
- (14) The policy or policies provided to state employees or their dependents pursuant to this section shall provide coverage for obtaining a hearing aid and acquiring hearing aid-related services for insured individuals under eighteen (18) years of age, subject to a cap of one thousand four hundred dollars (\$1,400) every thirty-six (36) months pursuant to KRS 304.17A-132.
- (15) If a state employee's residence and place of employment are in the same county, and if the hospital located within that county does not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a contiguous county that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.
- (16) If a state employee's residence and place of employment are each located in counties in which the hospitals do not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a county contiguous to the county of residence that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.

- (17) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and in the best interests of the state group to allow any carrier bidding to offer health care coverage under this section to submit bids that may vary county by county or by larger geographic areas.
- (18) Notwithstanding any other provision of this section, the bid for proposals for health insurance coverage for calendar year 2004 shall include a bid scenario that reflects the statewide rating structure provided in calendar year 2003 and a bid scenario that allows for a regional rating structure that allows carriers to submit bids that may vary by region for a given product offering as described in this subsection:
- (a) The regional rating bid scenario shall not include a request for bid on a statewide option;
 - (b) The Personnel Cabinet shall divide the state into geographical regions which shall be the same as the partnership regions designated by the Department for Medicaid Services for purposes of the Kentucky Health Care Partnership Program established pursuant to 907 KAR 1:705;
 - (c) The request for proposal shall require a carrier's bid to include every county within the region or regions for which the bid is submitted and include but not be restricted to a preferred provider organization (PPO) option;
 - (d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the carrier all of the counties included in its bid within the region. If the Personnel Cabinet deems the bids submitted in accordance with this subsection to be in the best interests of state employees in a region, the cabinet may award the contract for that region to no more than two (2) carriers; and
 - (e) Nothing in this subsection shall prohibit the Personnel Cabinet from including other requirements or criteria in the request for proposal.
- (19) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section which provides coverage for services rendered by a physician or osteopath duly licensed under KRS Chapter 311 that are within the scope of practice of an optometrist duly licensed under the provisions of KRS Chapter 320 shall provide the same payment of coverage to optometrists as allowed for those services rendered by physicians or osteopaths.
- (20) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section shall comply with the provisions of KRS 304.17A-270 and 304.17A-525.
- (21) Any full insured health benefit plan or self insured plan issued or renewed on or after July 12, 2006, to public employees shall comply with KRS 304.17A-600 to 304.17A-633 pertaining to utilization review, KRS 205.593 and 304.17A-700 to 304.17A-730 pertaining to payment of claims, KRS 304.14-135 pertaining to uniform health insurance claim forms, KRS 304.17A-580 and 304.17A-641 pertaining to emergency medical care, KRS 304.99-123, and any administrative regulations promulgated thereunder.

Section 4. KRS 161.158 is amended to read as follows:

- (1) (a) Each district board of education may form its employees into a group or groups or recognize existing groups for the purpose of obtaining the advantages of group life, disability, medical, and dental insurance, or any group insurance plans to aid its employees including the state employee health insurance group as described in KRS 18A.225, as long as the employees continue to be employed by the board of education. Medical and dental group insurance plans obtained under authority of this section may include insurance benefits for the families of the insured group or groups of employees. Any district board of education may pay all or part of the premium on the policies, and may deduct from the salaries of the employees that part of the premium which is to be paid by them and may contract with the insurer to provide the above benefits. As permitted in KRS 160.280(5), board members shall be eligible to participate in any group medical or dental insurance provided by the district for employees.
- (b) If a district board of education participates in the state employee health insurance program, as described in KRS 18A.225, for its active employees and terminates participation and there is a state appropriation approved by the General Assembly for the employer's contribution for active employees' health insurance coverage, neither the board of education nor the employees shall receive the state-funded contribution after termination from the state employee health insurance program.
- (2) (a) Each district board of education shall adopt policies or regulations which will provide for:
- I. Deductions from salaries of its employees or groups of employees whenever a request is presented to the board by said employees or groups thereof. The deductions shall be made from

salaries earned in at least eight (8) different pay periods~~], and shall be remitted to the appropriate organization or association as specified by the employees within thirty (30) days following the deduction provided the district has received appropriate invoices or necessary documentation~~. The deductions may be made for, but are not limited to, membership dues, tax-sheltered annuities, and group insurance premiums. With the exception of membership dues, the board shall not be required to make more than one (1) remittance of amounts deducted during a pay period for a separate type of deduction; *and*

2. *Deductions from payments for the per diem and actual expenses provided under subsection (1) of Section 1 of this Act to members of the district board of education whenever a request is presented by a board member to the board. The deductions may be made for but not be limited to membership dues, health insurance purchases, scholarship funds, and contributions to a political action committee.*
 - (b) *The deductions under paragraph (a)1. and 2. of this subsection shall be remitted to the appropriate organization or association as specified by the employees within thirty (30) days following the deduction, provided the district has received appropriate invoices or necessary documentation.*
 - (c) Health insurance, life insurance, and tax-sheltered annuities shall be interpreted as separate types of deductions. When amounts have been correctly deducted and remitted by the board, the board shall bear no further responsibility or liability for subsequent transaction.
- (3) Payments and deductions made by the board of education under the authority of this section are presumed to be for services rendered and for the benefit of the common schools, and the payments and deductions shall not affect the eligibility of any school system to participate in the public school funding program as established in KRS Chapter 157.

Approved March 23, 2007.

CHAPTER 89

(HB 128)

AN ACT relating to honoring military service through education benefits.

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

Section 1. KRS 164.507 is amended to read as follows:

- (1) The nonremarried spouse, regardless of age, and any child, stepchild, or orphan, under the age of ***twenty-six (26)***~~*twenty-three (23)*~~, of a deceased veteran shall not be required to pay any matriculation or tuition fees upon admission to any state-supported university, junior college, or vocational training institute for a period not in excess of ***forty-five (45)***~~*thirty-six (36)*~~ months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion, if the deceased parent or spouse:
 - (a)
 1. Served in the Armed Forces of the United States during a national emergency, wars declared by Congress, or actions of the United Nations; or
 2. Died while on active duty in the Armed Forces of the United States regardless of wartime service; or
 3. Died as a result of a service-connected disability acquired while on active duty with the Armed Forces of the United States regardless of wartime service; and
 - (b)
 1. Was a resident of the Commonwealth of Kentucky at the time of death; or
 2. Was married to a resident of Kentucky at the time of death; and
 3. If discharged, was under honorable conditions.
- (2) In order to obtain the benefits conferred by subsection (1), the parent-child relationship must be shown by birth certificate, adoption papers, marriage certificate, or other documentary evidence. A stepchild must have been a member of the veteran's household at the time of the veteran's death. The spousal relationship must be shown by a marriage certificate or other documentary evidence. The parent's or spouse's service and the cause of death

must be evidenced by certification from the records of the Kentucky Department of Military Affairs, the Veterans Administration Records, or the Department of Defense of the United States. In the event one so admitted to a state-supported university, junior college, or vocational training institution under this section shall have obtained a cash scholarship paid or payable to the institution, from whatever source, the amount of the scholarship shall be applied to the credit of the applicant in the payment of incidental expenses of attendance at the institution, and any balance, if the terms of the scholarship permit, shall be returned to the applicant.

Section 2. KRS 164.515 is amended to read as follows:

- (1) The spouse, regardless of age, and any child, stepchild, or orphan, under the age of ***twenty-six (26)***~~*twenty-three (23)*~~, of a permanently and totally disabled member of the Kentucky National Guard or Reserve Component injured while on state active duty, active duty for training, or inactive duty training, or a permanently and totally disabled war veteran, or a one hundred percent (100%) service-connected disabled veteran regardless of wartime service, or prisoner of war or member of the Armed Services declared missing in action shall not be required to pay any matriculation or tuition fees upon his admission to any state-supported institution of higher education or to any state-supported vocational training school for a period not in excess of ***forty-five (45)***~~*thirty-six (36)*~~ months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion.
- (2) To be entitled to benefits under this section the parent or stepparent of the child claiming benefits if living must be rated permanently and totally disabled for pension purposes or one hundred percent (100%) disabled for compensation purposes by the United States Veterans Administration or the Department of Defense. If the veteran is deceased, the claim to benefits is to be based on the rating held by the veteran at the time of death or if a prisoner of war or missing in action, must have been declared as such by the Department of Defense. Members of the Kentucky National Guard must be rated permanently and totally disabled as provided in KRS Chapter 342. The parent's, stepparent's, or spouse's service and rating must be evidenced by certification from the records of the Kentucky Department of Military Affairs, Veterans Administration Records, or the Department of Defense of the United States.
- (3) The parent-child relationship must be shown by birth certificate, legal adoption papers, marriage certificate, or other documentary evidence. A stepchild must be a member of the veteran's household. The spousal relationship must be shown by a marriage certificate or other documentary evidence.
- (4) To entitle a spouse, child, stepchild, or orphan to benefit under this section the disabled member of the National Guard or Reserve Component veteran living or deceased must have served on state active duty, active duty for training, or inactive duty training or active duty with the Armed Forces of the United States, and his discharge must have been under honorable conditions. He must be a resident or, if deceased, have been a resident of the Commonwealth of Kentucky.
- (5) No provision of this section shall serve to deny these benefits to an eligible spouse, child, stepchild, or orphan, who enlists, or who fulfills a military obligation, in the Armed Forces of the United States and is discharged under honorable conditions; the period of time spent in the military service to be compensated by like time, beyond the age of ***twenty-six (26)***~~*twenty-three (23)*~~ years if required, but not in excess of the period of enrollment as set forth in subsection (1) of this section.
- (6) The marriage of an eligible child, stepchild, or orphan, shall not serve to deny full entitlement to the benefits provided in this section.

Approved March 23, 2007.

CHAPTER 90

(HB 337)

AN ACT relating to Medicaid reimbursement for smoking cessation treatment.

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

Section 1. KRS 205.560 is amended to read as follows:

- (1) The scope of medical care for which the Cabinet for Health and Family Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section.

Within the limitations of any appropriation therefor, the provision of complete upper and lower dentures to recipients of Medical Assistance Program benefits who have their teeth removed by a dentist resulting in the total absence of teeth shall be a mandatory class in the scope of medical care. Payment to a dentist of any Medical Assistance Program benefits for complete upper and lower dentures shall only be provided on the condition of a preauthorized agreement between an authorized representative of the Medical Assistance Program and the dentist prior to the removal of the teeth. The selection of another class or other classes of medical care shall be recommended by the council to the secretary for health and family services after taking into consideration, among other things, the amount of federal and state funds available, the most essential needs of recipients, and the meeting of such need on a basis insuring the greatest amount of medical care as defined in KRS 205.510 consonant with the funds available, including, but not limited to, the following categories, except where the aid is for the purpose of obtaining an abortion:

- (a) Hospital care, including drugs, and medical supplies and services during any period of actual hospitalization;
- (b) Nursing-home care, including medical supplies and services, and drugs during confinement therein on prescription of a physician, dentist, or podiatrist;
- (c) Drugs, nursing care, medical supplies, and services during the time when a recipient is not in a hospital but is under treatment and on the prescription of a physician, dentist, or podiatrist. For purposes of this paragraph, drugs shall include those amino acid modified preparations and low-protein modified food products for the treatment of the following inherited metabolic diseases, if the amino acid modified preparations or low-protein modified food products are prescribed for therapeutic treatment and are administered under the direction of a physician, and are limited to the following conditions:
 - 1. Phenylketonuria;
 - 2. Hyperphenylalaninemia;
 - 3. Tyrosinemia (types I, II, and III);
 - 4. Maple syrup urine disease;
 - 5. A-ketoacid dehydrogenase deficiency;
 - 6. Isovaleryl-CoA dehydrogenase deficiency;
 - 7. 3-methylcrotonyl-CoA carboxylase deficiency;
 - 8. 3-methylglutaconyl-CoA hydratase deficiency;
 - 9. 3-hydroxy-3-methylglutaryl-CoA lyase deficiency (HMG-CoA lyase deficiency);
 - 10. B-ketothiolase deficiency;
 - 11. Homocystinuria;
 - 12. Glutaric aciduria (types I and II);
 - 13. Lysinuric protein intolerance;
 - 14. Non-ketotic hyperglycinemia;
 - 15. Propionic acidemia;
 - 16. Gyrate atrophy;
 - 17. Hyperornithinemia/hyperammonemia/homocitrullinuria syndrome;
 - 18. Carbamoyl phosphate synthetase deficiency;
 - 19. Ornithine carbamoyl transferase deficiency;
 - 20. Citrullinemia;
 - 21. Arginosuccinic aciduria;
 - 22. Methylmalonic acidemia; and

23. Argininemia;
- (d) Physician, podiatric, and dental services;
 - (e) Optometric services for all age groups shall be limited to prescription services, services to frames and lenses, and diagnostic services provided by an optometrist, to the extent the optometrist is licensed to perform the services and to the extent the services are covered in the ophthalmologist portion of the physician's program. Eyeglasses shall be provided only to children under age twenty-one (21);
 - (f) Drugs on the prescription of a physician used to prevent the rejection of transplanted organs if the patient is indigent;
 - (g) Nonprofit neighborhood health organizations or clinics where some or all of the medical services are provided by licensed registered nurses or by advanced medical students presently enrolled in a medical school accredited by the Association of American Medical Colleges and where the students or licensed registered nurses are under the direct supervision of a licensed physician who rotates his services in this supervisory capacity between two (2) or more of the nonprofit neighborhood health organizations or clinics specified in this paragraph;
 - (h) Services provided by health-care delivery networks as defined in KRS 216.900;~~[-and]~~
 - (i) Services provided by midlevel health-care practitioners as defined in KRS 216.900; **and**
 - (j) ***Smoking cessation treatment interventions or programs prescribed by a physician, advanced registered nurse practitioner, physician assistant, or dentist, including but not limited to counseling, telephone counseling through a quitline, recommendations to the recipient that smoking should be discontinued, and prescription and over-the-counter medications and nicotine replacement therapy approved by the United States Food and Drug Administration for smoking cessation.***
- (2) Payments for hospital care, nursing-home care, and drugs or other medical, ophthalmic, podiatric, and dental supplies shall be on bases which relate the amount of the payment to the cost of providing the services or supplies. It shall be one (1) of the functions of the council to make recommendations to the Cabinet for Health and Family Services with respect to the bases for payment. In determining the rates of reimbursement for long-term-care facilities participating in the Medical Assistance Program, the Cabinet for Health and Family Services shall, to the extent permitted by federal law, not allow the following items to be considered as a cost to the facility for purposes of reimbursement:
- (a) Motor vehicles that are not owned by the facility, including motor vehicles that are registered or owned by the facility but used primarily by the owner or family members thereof;
 - (b) The cost of motor vehicles, including vans or trucks, used for facility business shall be allowed up to fifteen thousand dollars (\$15,000) per facility, adjusted annually for inflation according to the increase in the consumer price index-u for the most recent twelve (12) month period, as determined by the United States Department of Labor. Medically equipped motor vehicles, vans, or trucks shall be exempt from the fifteen thousand dollar (\$15,000) limitation. Costs exceeding this limit shall not be reimbursable and shall be borne by the facility. Costs for additional motor vehicles, not to exceed a total of three (3) per facility, may be approved by the Cabinet for Health and Family Services if the facility demonstrates that each additional vehicle is necessary for the operation of the facility as required by regulations of the cabinet;
 - (c) Salaries paid to immediate family members of the owner or administrator, or both, of a facility, to the extent that services are not actually performed and are not a necessary function as required by regulation of the cabinet for the operation of the facility. The facility shall keep a record of all work actually performed by family members;
 - (d) The cost of contracts, loans, or other payments made by the facility to owners, administrators, or both, unless the payments are for services which would otherwise be necessary to the operation of the facility and the services are required by regulations of the Cabinet for Health and Family Services. Any other payments shall be deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health and Family Services. Interest paid to the facility for loans made to a third party may be used to offset allowable interest claimed by the facility;
 - (e) Private club memberships for owners or administrators, travel expenses for trips outside the state for owners or administrators, and other indirect payments made to the owner, unless the payments are

deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health and Family Services; and

- (f) Payments made to related organizations supplying the facility with goods or services shall be limited to the actual cost of the goods or services to the related organization, unless it can be demonstrated that no relationship between the facility and the supplier exists. A relationship shall be considered to exist when an individual, including brothers, sisters, father, mother, aunts, uncles, and in-laws, possesses a total of five percent (5%) or more of ownership equity in the facility and the supplying business. An exception to the relationship shall exist if fifty-one percent (51%) or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.
- (3) No vendor payment shall be made unless the class and type of medical care rendered and the cost basis therefor has first been designated by regulation.
- (4) The rules and regulations of the Cabinet for Health and Family Services shall require that a written statement, including the required opinion of a physician, shall accompany any claim for reimbursement for induced premature births. This statement shall indicate the procedures used in providing the medical services.
- (5) The range of medical care benefit standards provided and the quality and quantity standards and the methods for determining cost formulae for vendor payments within each category of public assistance and other recipients shall be uniform for the entire state, and shall be designated by regulation promulgated within the limitations established by the Social Security Act and federal regulations. It shall not be necessary that the amount of payments for units of services be uniform for the entire state but amounts may vary from county to county and from city to city, as well as among hospitals, based on the prevailing cost of medical care in each locale and other local economic and geographic conditions, except that insofar as allowed by applicable federal law and regulation, the maximum amounts reimbursable for similar services rendered by physicians within the same specialty of medical practice shall not vary according to the physician's place of residence or place of practice, as long as the place of practice is within the boundaries of the state.
- (6) Nothing in this section shall be deemed to deprive a woman of all appropriate medical care necessary to prevent her physical death.
- (7) To the extent permitted by federal law, no medical assistance recipient shall be recertified as qualifying for a level of long-term care below the recipient's current level, unless the recertification includes a physical examination conducted by a physician licensed pursuant to KRS Chapter 311 or by an advanced registered nurse practitioner licensed pursuant to KRS Chapter 314 and acting under the physician's supervision.
- (8) If payments made to community mental health centers, established pursuant to KRS Chapter 210, for services provided to the mentally retarded exceed the actual cost of providing the service, the balance of the payments shall be used solely for the provision of other services to the mentally retarded through community mental health centers.
- (9) No long-term-care facility, as defined in KRS 216.510, providing inpatient care to recipients of medical assistance under Title XIX of the Social Security Act on July 15, 1986, shall deny admission of a person to a bed certified for reimbursement under the provisions of the Medical Assistance Program solely on the basis of the person's paying status as a Medicaid recipient. No person shall be removed or discharged from any facility solely because they became eligible for participation in the Medical Assistance Program, unless the facility can demonstrate the resident or the resident's responsible party was fully notified in writing that the resident was being admitted to a bed not certified for Medicaid reimbursement. No facility may decertify a bed occupied by a Medicaid recipient or may decertify a bed that is occupied by a resident who has made application for medical assistance.
- (10) Family-practice physicians practicing in geographic areas with no more than one (1) primary-care physician per five thousand (5,000) population, as reported by the United States Department of Health and Human Services, shall be reimbursed one hundred twenty-five percent (125%) of the standard reimbursement rate for physician services.
- (11) The Cabinet for Health and Family Services shall make payments under the Medical Assistance program for services which are within the lawful scope of practice of a chiropractor licensed pursuant to KRS Chapter 312, to the extent the Medical Assistance Program pays for the same services provided by a physician.

- (12) The Medical Assistance Program shall use the form and guidelines established pursuant to KRS 304.17A-545(5) for assessing the credentials of those applying for participation in the Medical Assistance Program, including those licensed and regulated under KRS Chapters 311, 312, 313, 314, 315, and 320, any facility required to be licensed pursuant to KRS Chapter 216B, and any other health care practitioner or facility as determined by the Department for Medicaid Services through an administrative regulation promulgated under KRS Chapter 13A.

Approved March 23, 2007.

CHAPTER 91

(HB 536)

AN ACT relating to economic development, making an appropriation therefor and declaring an emergency.

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

SECTION 1. SUBCHAPTER 25 OF KRS CHAPTER 154 IS CREATED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in this subchapter, unless the context clearly indicates otherwise:

- (1) *"Activation date" means a date selected by an approved company and set forth in the jobs retention agreement at any time within a three (3) year period after the date of final approval of the agreement by the authority upon which the required investment shall be made and the jobs retention project completed;*
- (2) *"Agreement" means a jobs retention agreement entered into, pursuant to Section 3 of this Act, on behalf of the authority and an approved company with respect to a jobs retention project;*
- (3) *"Approved company" means any eligible company approved by the authority pursuant to Section 3 of this Act for a jobs retention project;*
- (4) *"Approved costs" means that portion of the eligible costs approved by the authority that an approved company may recover through the inducements authorized by Section 3 of this Act, being a percentage of eligible costs as approved by the authority;*
- (5) *"Assessment" means the wage assessment fee authorized by Section 4 of this Act;*
- (6) *"Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;*
- (7) *"Commonwealth" means the Commonwealth of Kentucky;*
- (8) *"Eligible company" means any corporation, limited liability company, partnership, limited 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 is within the jurisdiction of a consolidated local government containing a city of the first class, employs a minimum of one thousand (1,000) full-time persons engaged in manufacturing, has been operating within the Commonwealth on a continuous basis for at least five (5) years preceding the request for approval by the authority of the project which meets the standards set forth in Section 2 of this Act, and that has been previously approved for economic development incentives from the Commonwealth related to one or more of its facilities;*
- (9) *"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 a jobs retention project;*
 - (b) *The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of a jobs retention 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 jobs retention project;*

- (d) *All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of a jobs retention 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;*
- (10) *"Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;*
- (11) *"Inducements" means the Kentucky tax credit and the wage assessment fee as prescribed in Sections 3 and 4 of this Act;*
- (12) *"Jobs retention 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 a significant number of existing jobs within the Commonwealth;*
- (13) *"Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401;*
- (14) *"Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401;*
- (15) *"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;*
- (16) *"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;*
- (17) *"Supplemental project" means a second jobs retention project proposed by the approved company or its affiliate during the term of a jobs retention project which may be included in the jobs retention agreement by way of amendment and which may result in increased inducements and an extension of the original project term; and*
- (18) *"Transferred credits" means unused approved costs as determined by the Department of Revenue from a previously approved, independent, active project under a different incentive program governed by the Cabinet for Economic Development that may be transferred to a jobs retention project and used by the approved company pursuant to a jobs retention agreement.*

SECTION 2. A NEW SECTION OF SUBCHAPTER 25 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The criteria for approval of eligible companies and jobs retention projects shall include but not be limited to:*
 - (a) *The need for the project as indicated by the impact of the existing facility upon the local community and the economic and employment impact that the loss of the facility would have;*
 - (b) *The new capital investment in its facilities and the likelihood that the capital investment will increase potential for sustainability of its workforce and facilities in the future; and*
 - (c) *The retention or creation of employment at the facility where the jobs retention project will occur as well as any other facilities owned by the approved company in the Commonwealth.*
- (2) *With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall request materials and make inquiries of the applicant as necessary or appropriate. Upon review of the application*

and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the jobs retention project. The authority and the preliminarily approved company shall enter into a memorandum of agreement that sets forth the conditions necessary for the company to obtain final approval of the project. Upon satisfaction of the conditions set forth in the memorandum of agreement, the authority may, by resolution, designate the preliminarily approved company to be an approved company and authorize the execution of a jobs retention agreement.

SECTION 3. A NEW SECTION OF SUBCHAPTER 25 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The authority, upon adoption of its final approval, may enter into, with any approved company, an agreement with respect to the jobs retention project. The terms and provisions of each agreement, including the amount of approved costs, the amount of the inducement, the job maintenance requirement and any limitations the authority may deem necessary, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:*
 - (a) *The amount the approved company may recover through inducements under this subchapter for the initial project, which shall be a negotiated percentage not to exceed fifty percent (50%) of approved costs. However, the authority may negotiate an increase in the percentage such that both the initial project and the supplemental project are eligible for seventy-five percent (75%) of approved costs upon approval of a supplemental project. The adjustment to the initial project shall be made on the total approved costs and any credits taken prior to the supplemental project shall then be subtracted from that increased amount of approved costs. Neither the initial project or the supplemental project shall ever be eligible for inducements greater than seventy-five percent (75%) of the approved costs. The authority shall negotiate a maximum allowable inducement for each year of the agreement and the approved company may not recover inducements above that maximum in any year during the term of the agreement, except that the annual maximum allowable inducement may be exceeded if a carry-forward of unused inducements from previous years exists. Any carry-forward of unused inducements will lapse upon maturity or termination of the agreement;*
 - (b) *A provision that sets the activation date for the initial project within three (3) years of the final approval. Prior to the activation date, the authority may extend the time for the completion of the jobs retention project and compliance with the required investment upon request of the approved company for good cause; however, the ten (10) year period for the term of the agreement shall begin from the activation date. No inducements from the jobs retention project shall be available, other than the transferred credits provided for under Section (3) of this Act, until activation. Upon activation, the balance of transferred credits shall expire;*
 - (c) *A provision that states that within three (3) months of the completion of the jobs retention project, the approved company shall document the actual cost of the project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project. The approved company shall reimburse the authority for the cost of the consultant;*
 - (d) *A provision that establishes a minimum required number of full-time jobs that must be maintained at the site of the jobs retention project and filled with residents of the Commonwealth subject to Kentucky income tax and states that the authorized inducements may be suspended at the discretion of the authority from the date of noncompliance until the date compliance is reestablished if the approved company's employment falls below the established minimum employment requirement. If the company does not increase the number of full-time employees at the site who are residents of the Commonwealth and subject to Kentucky income tax sufficiently to meet the minimum employment requirement within one (1) year from the date of the initial suspension, the remaining unused inducements may be terminated at the discretion of the authority;*
 - (e) *A provision that gives the authority discretion to suspend or terminate the authorized inducements for any failure to comply with the terms of the agreement; and*
 - (f) *A provision that provides the term shall not be longer than the earlier of:*
 1. *The date on which the approved company has received inducements or withheld assessments equal to the amount that the company may recover under paragraph (a) of this subsection; or*

2. *Ten (10) years from the activation date.*

However, the term may be extended to a period longer than ten (10) years upon the addition of a supplemental project as negotiated and approved by the authority.

(2) *In consideration of the execution of the agreement, during the time the agreement is in effect, which time shall commence on the date of the agreement, the approved company may be permitted the following inducements:*

- (a) *Beginning on the effective date of the jobs retention agreement, which shall also be the date of final approval, if the approved company has a balance of unused approved costs on a previously existing and active incentive agreement approved by the authority pursuant to Subchapter 24 or 28 of KRS Chapter 154, the approved company may impose wage assessments on employees whose jobs are at the facility where the project defined in the previously existing incentive agreement was located. The wage assessments may be imposed as provided in Section 4 of this Act, and shall be available in an amount up to the balance of transferred credits from the previously existing project.*
 - 1. *The transferred credits shall only be available to the approved company until the activation date, the term from the original incentive agreement expires, or the balance of transferred credits is exhausted, whichever occurs first; and*
 - 2. *Should the approved company exercise this option, the incentive agreement from which the credits were transferred shall be terminated upon transfer and all parties shall be released from their obligations thereunder.*
- (b) *After the activation date:*
 - 1. *A one hundred percent (100%) credit against the taxes imposed by KRS 141.020, 141.040, and 141.0401 that would otherwise be owed by the approved company, in the approved company's taxable year, as determined under Section 6 of this Act, on the taxable income, Kentucky gross receipts, or Kentucky gross profits of the approved company generated by or arising from the jobs retention project. The ordering of credits shall be as provided in KRS 141.0205;*
 - 2. *The aggregate assessment withheld by the approved company as provided in Section 4 of this Act in each year after the activation date.*
- (c) *The tax credits allowed to the approved company shall be equal to the lesser of the total amount of the tax liability or the amount that the company may recover under subsection (1)(a) of this section that has not yet been recovered, reduced by any recovery through the collection of assessments subject to the annual maximum inducements authorized pursuant to subsection (1)(a) of this section. The credit shall be allowed for each taxable year of the approved company during the term of the agreement and for which a tax return of the approved company is filed until the amount that the company may recover under subsection(1)(a) of this section has been received through a combination of credits and assessments, if the company elects to impose assessments. The approved company shall not be required to pay estimated tax payments as prescribed under KRS 141.044 or 141.305 on income, Kentucky gross profits, or Kentucky gross receipts from the jobs retention project. One hundred eighty (180) days after the filing of the tax return of the approved company, the Department of Revenue shall certify to the authority the state tax liability for the preceding taxable year of the approved company and the amount of any tax credits taken pursuant to this section.*
- (d) *Prior to execution of the agreement, the eligible company shall secure from all local governmental authorities responsible for collecting local occupational license fees a resolution or order of the local governmental entities acknowledging and consenting to the termination or partial termination of the receipt of local occupational license fees on wages subject to the agreement paid by the approved company on behalf of its employees to the local government entities.*
- (e) *If more than one (1) local occupational license fee is imposed upon the employees of the approved company, the assessment imposed upon the employees shall be credited against the local occupational license fee and shall be apportioned to each local occupational license fee according to each local occupational license fee's proportion to the total of all local occupational license fees for such employees. No credit or portion thereof shall be allowed against any local occupational license fee imposed by or dedicated solely to a local board of education.*

- (f) *If in any taxable year of the approved company during which the agreement is in effect the assessment collected from the wages of the employees exceeds the expended portion of the amount that the approved company may recover under paragraph (a) of this subsection, or exceeds the annual maximum negotiated by the authority, the assessment collected from the wages of the employees shall cease for the remainder of that taxable year of the approved company. The approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that taxable year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.*
- (3) *The jobs retention agreement and inducements available pursuant thereto shall not be transferable or assignable by the approved company without the expressed written consent of the authority.*

SECTION 4. A NEW SECTION OF SUBCHAPTER 25 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The approved company may require that each employee subject to the income tax imposed by KRS 141.020, whose job was preserved or created as a result of the project, as a condition of employment or the retention of employment, agree to pay an assessment, not to exceed five percent (5%) of the gross wages of each employee subject to the income tax imposed by KRS 141.020 unless:*
 - (a) *The local government or governments in which the project is located have a local occupational license fee of less than one percent (1%) and agree to forgo all of their local occupational license fee, in which case the assessment shall equal four percent (4%) plus the percentage of the local occupational license fee;*
 - (b) *The local government or governments in which the project is located have a local occupational license fee of less than one percent (1%) and agree to forego a portion of their local occupational license fee, in which case the assessment shall equal the percentage that the local government or governments agree to forego plus a percentage that is four times the percentage the local government or governments agree to forego;*
 - (c) *The local government or governments in which the project is located have a local occupational license fee equal to or greater than one percent (1%) and the local government or governments agree to forego an amount less than one percent (1%) in which case the assessment shall equal the percentage that the local government or governments agree to forego plus a percentage that is four times the percentage the local government or governments agree to forego; or*
 - (d) *The local government or governments in which the project is located have no local occupational license fee, in which case the assessment shall equal four percent (4%).*
- (2) *Each assessed employee shall be entitled to a credit against the Kentucky income tax required to be withheld under KRS 141.310 in the form of a simultaneous adjustment equal to four-fifths (4/5) of the assessment, unless:*
 - (a) *The assessment is calculated under subsection (1)(a) of this section, in which case the credit shall be equal to the total assessment less the occupational license fee; or*
 - (b) *The assessment is calculated under subsection (1)(d) of this section, in which case the credit shall be equal to one hundred percent (100%) of the assessment.*
- (3) *Each employee assessed under subsection (1) of this section also shall be entitled to a credit against the local occupational license fee in the form of a simultaneous adjustment of the local occupational license fee withholding equal to one-fifth (1/5) of the assessment, unless the wage assessment is calculated under subsection (1)(a), in which case the credit shall equal the same amount as the local occupational license fee.*
- (4) *If an approved company elects to impose the assessment as a condition of employment or the retention of employment, the approved company shall deduct the assessment from each paycheck of each employee subject to the provisions of subsections (2) and (3) of this section.*
- (5) *Any approved company collecting an assessment shall make its payroll books and records available to the authority at such reasonable times as the authority shall request and shall file with the authority the documentation respecting the assessment the authority may require.*

- (6) *Any assessment of the wages of the employees of an approved company shall permanently lapse upon expiration or termination of the agreement unless the agreement has been amended to extend the termination as a result of a supplemental project.*
- (7) *By October 1 of each year, the Department of Revenue shall certify to the authority, in the form of an annual report, aggregate tax credits claimed on tax returns filed during the taxable year ending June 30 of that year and wage assessment fees taken during the prior calendar year by approved companies with respect to their jobs retention projects under this subchapter, and shall certify to the authority, within one hundred eighty (180) days from the date an approved company has filed its state tax return, when an approved company has taken tax credits equal to its total inducements.*

SECTION 5. A NEW SECTION OF SUBCHAPTER 25 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *If an approved company makes an additional investment in the form of a second jobs retention project within the jurisdiction of the same consolidated local government containing a city of the first class during the term of the initial jobs retention project, the approved company may apply for, and the authority may approve, a supplemental project.*
- (2) *The authority, upon adoption of its final approval of a supplemental project, may enter into, with any approved company, an amended agreement with respect to both the initial jobs retention project and the supplemental project which shall jointly make up its project. The terms and provisions of each amended agreement, including the amount of approved costs, the amount of the tax credit pursuant to Section 3 of this Act, the job maintenance requirement established by the agreement, and any limitations the authority may deem necessary, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:*
 - (a) *Upon approval of a supplemental project, the amount the approved company may recover through inducements for both projects shall be a negotiated percentage not to exceed seventy-five percent (75%) of the balance of approved costs from the initial project and all newly incurred approved costs from the supplemental project, subject to the annual maximum negotiated and approved by the authority. At the time the supplemental project is approved, the recoverable amount and the annual maximum inducement on the initial jobs retention project may also be increased at the discretion of the authority pursuant to Section 3 of this Act.*
 - (b) *The activation date for the supplemental project shall be no more than three (3) years from final approval of the supplemental project. Prior to the activation date the authority may extend the time for the completion of the jobs retention project and compliance with the required investment upon request of the approved company for good cause; however, the ten (10) year period for the term of the agreement shall begin from the activation date. Within three (3) months of the completion date for the supplemental project, the approved company shall document the actual cost of the project in a manner acceptable to the authority. The authority may employ an independent consultant to verify the cost of the supplemental project subject to reimbursement for the cost of same from the approved company.*
 - (c) *In consideration of the execution of the amended agreement, on the date stated in the agreement, the approved company may be permitted during the term of the amended agreement to take the inducements set forth in Sections 3(2)(b) and 3(2)(c) of this Act, subject to the remaining terms of that section.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, unless the context requires otherwise:*
 - (a) *"Approved company" shall have the same meaning as set forth in Section 1 of this Act;*
 - (b) *"Jobs retention project" shall have the same meaning as set forth in Section 1 of this Act;*
 - (c) *"Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401;*
 - (d) *"Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401; and*
 - (e) *"Tax credit" means the tax credit allowed in Section 3 of this Act.*
- (2) *An approved company shall determine the income tax credit as provided in this section.*

- (3) *An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation or pass-through entity treated as a corporation for federal income tax purposes subject to tax under KRS 141.040(1) shall:*
- (a)
 - 1. *Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), including income from the jobs retention project;*
 - 2. *Compute the limited liability entity tax imposed under KRS 141.0401, including Kentucky gross profits or Kentucky gross receipts from the jobs retention project; and*
 - 3. *Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.*
 - (b)
 - 1. *Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), excluding net income attributable to the jobs retention project;*
 - 2. *Using the same method used under subparagraph 2. of paragraph (a) of this subsection, compute the limited liability entity tax imposed under KRS 141.0401, excluding Kentucky gross profits or Kentucky gross receipts from the jobs retention project; and*
 - 3. *Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.*
 - (c) *The tax credit shall be the amount by which the net tax computed under paragraph (a)3. of this subsection exceeds the tax computed under paragraph (b)3. of this subsection; however, the credit shall not exceed the limits set forth in Section 3 of this Act.*
- (4) (a) *Notwithstanding any other provisions of this chapter, an approved company which is a pass-through entity not subject to the tax imposed by KRS 141.040 or trust not subject to the tax imposed by KRS 141.040 shall be subject to income tax on the net income attributable to a jobs retention project at the rates provided in KRS 141.020(2).*
- (b) *The amount of the tax credit shall be determined as provided in subsection (3) of this section. Upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners, members, shareholders, or beneficiaries of the pass-through entity or trust, and shall be paid on behalf of the partners, members, shareholders, or beneficiaries.*
- (c) *The tax credit or estimated payment shall not exceed the limits set forth in Section 3 of this Act.*
- (d) *If the tax computed in this section exceeds the tax credit, the difference shall be paid by the pass-through entity or trust at the times provided by KRS 141.160 for filing the returns.*
- (e) *Any estimated tax payment made by the pass-through entity or trust in satisfaction of the tax liability of partners, members, shareholders, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner, member, shareholder, or beneficiary.*
- (5) *Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's, member's, shareholder's, or beneficiary's distributive share of net income or credit of a pass-through entity or trust.*
- (6) (a) *Net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility; and*
- (b) *Kentucky gross receipts or Kentucky gross profits attributable to the project for purposes of subsection (3) of this section shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility.*

- (7) *If an approved company can show to the satisfaction of the Department of Revenue that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, Kentucky gross receipts, or Kentucky gross profits from the facility at which the jobs retention project is located, the approved company shall determine net income, Kentucky gross receipts, or Kentucky gross profits from the jobs retention project using an alternative method approved by the Department of Revenue.*
- (8) *The Department of Revenue may promulgate administrative regulations and require the filing of forms designed by the Department of Revenue to reflect the intent of this Act and the allowable income tax credit which an approved company may retain under this Act.*

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

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of the credits shall be determined as follows:

- (1) The nonrefundable business incentive credits against the tax imposed by KRS 141.020 shall be taken in the following order:
 - (a) 1. For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(a);
 - 2. For taxable years beginning after December 31, 2006, the limited liability entity tax credit permitted by KRS 141.0401;
 - (b) The economic development credits computed under KRS 141.347, 141.400, 141.401, 141.403, 141.407, 141.415, *Section 6 of this Act*, and 154.12-2088;
 - (c) The certified rehabilitation credit permitted by KRS 171.397;
 - (d) The health insurance credit permitted by KRS 141.062;
 - (e) The tax paid to other states credit permitted by KRS 141.070;
 - (f) The credit for hiring the unemployed permitted by KRS 141.065;
 - (g) The recycling or composting equipment credit permitted by KRS 141.390;
 - (h) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
 - (i) The coal incentive credit permitted under KRS 141.0405;
 - (j) The research facilities credit permitted under KRS 141.395;
 - (k) The employer GED incentive credit permitted under KRS 151B.127;
 - (l) The voluntary environmental remediation credit permitted by KRS 141.418;
 - (m) The biodiesel credit permitted by KRS 141.423;
 - (n) The environmental stewardship credit permitted by KRS 154.48-025; and
 - (o) The clean coal incentive credit permitted by KRS 141.428.
- (2) After the application of the nonrefundable credits in subsection (1) of this section, the nonrefundable personal tax credits against the tax imposed by KRS 141.020 shall be taken in the following order:
 - (a) The individual credits permitted by KRS 141.020(3);
 - (b) The credit permitted by KRS 141.066;
 - (c) The tuition credit permitted by KRS 141.069; and
 - (d) The household and dependent care credit permitted by KRS 141.067.
- (3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
 - (a) The individual withholding tax credit permitted by KRS 141.350;

- (b) The individual estimated tax payment credit permitted by KRS 141.305; and
 - (c) For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(c).
- (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040.
- (5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:
- (a) The economic development credits computed under KRS 141.347, 141.400, 141.401, 141.403, 141.407, 141.415, *Section 6 of this Act*, and 154.12-2088;
 - (b) The certified rehabilitation credit permitted by KRS 171.397;
 - (c) The health insurance credit permitted by KRS 141.062;
 - (d) The unemployment credit permitted by KRS 141.065;
 - (e) The recycling or composting equipment credit permitted by KRS 141.390;
 - (f) The coal conversion credit permitted by KRS 141.041;
 - (g) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods ending prior to January 1, 2008;
 - (h) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
 - (i) The coal incentive credit permitted under KRS 141.0405;
 - (j) The research facilities credit permitted under KRS 141.395;
 - (k) The employer GED incentive credit permitted under KRS 151B.127;
 - (l) The voluntary environmental remediation credit permitted by KRS 141.418;
 - (m) The biodiesel credit permitted by KRS 141.423;
 - (n) The environmental stewardship credit permitted by KRS 154.48-025; and
 - (o) The clean coal incentive credit permitted by KRS 141.428.
- (6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable corporation estimated tax payment credit permitted by KRS 141.044 shall be allowed as a credit against the total of any remaining taxes imposed by KRS 141.040 and the tax imposed by KRS 141.0401.

Section 8. There is hereby appropriated from the General Fund in fiscal year 2007- 2008 to the Cabinet for Economic Development, Financial Incentives, for use by the Bluegrass State Skills Corporation, the amount of \$10,000,000.

Section 9. An amount not to exceed \$8,000,000 during the 2006-2008 biennium shall be deemed a necessary government expense and transferred from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705) to adequately fund needs for training grants of the Bluegrass State Skills Corporation. These funds are in addition to the grant funds appropriated in the 2006-2008 biennium. These funds shall be transferred only upon certification of extraordinary need by the Secretary of the Cabinet for Economic Development to the Secretary of the Finance and Administration Cabinet.

Section 10. Whereas the Commonwealth is at risk of losing large motor vehicle manufacturing facilities, their supplier facilities, and a significant number of jobs related thereto due to the current state of the automotive industry, and as it is essential for the Cabinet for Economic Development to have a mechanism in place to offer appropriate assistance to retain those facilities and the jobs associated with them immediately, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved March 23, 2007.

CHAPTER 92**(HB 225)**

AN ACT relating to veterans.

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

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

- (1) (a) *The Kentucky Wounded or Disabled Veterans Program is hereby created in the Kentucky Department of Veterans' Affairs and shall be attached to the Office of the Commissioner for administrative purposes.*
- (b) *The program shall assist wounded or disabled veterans who served in the United States Armed Forces and were discharged under conditions other than dishonorable. The program shall:*
 - 1. *Ease the transition from active service for these wounded or disabled veterans; and*
 - 2. *Ensure that these wounded or disabled veterans receive the federal, state, and private benefits to which they are entitled as wounded or disabled veterans.*
- (c) *The commissioner shall designate a Wounded or Disabled Veterans Coordinator for the Commonwealth.*
- (2) *The Kentucky Wounded or Disabled Veterans Program shall:*
 - (a) *Perform outreach to improve wounded or disabled veterans' awareness of eligibility for federal, state, and private wounded or disabled veterans' services and benefits;*
 - (b) *Assess the needs of wounded or disabled veterans with respect to benefits and services;*
 - (c) *Review programs, research projects, and other initiatives that are or may be:*
 - 1. *Designed to address or meet the needs of Kentucky's wounded or disabled veterans; or*
 - 2. *Unresponsive or insensitive to the needs of these wounded or disabled veterans;*
 - (d) *Recommend changes, revisions, and new initiatives to the commissioner to:*
 - 1. *Address deficiencies identified through the review established in paragraph (c) of this subsection; and*
 - 2. *Improve benefits and services; and*
 - (e) *Incorporate wounded or disabled veterans' issues in strategic planning concerning benefits and services.*
- (3) *The primary components of the program shall be:*
 - (a) *Advocacy and Public Awareness. The program shall advocate for wounded or disabled veterans and shall work to increase public awareness about the needs of wounded or disabled veterans. The program shall advocate legislation and policies on the local, state, and national levels to address these issues;*
 - (b) *Collaboration. The program shall collaborate with federal, state, and private agencies that provide services to wounded or disabled veterans;*
 - (c) *Research and Information Dissemination. The program shall monitor and research issues relating to wounded or disabled veterans and disseminate information and opportunities throughout its network;*
 - (d) *Education. The program, through conferences, seminars, and training workshops with federal, state, and private agencies, shall provide guidance and direction to wounded or disabled veterans applying for grants, benefits, or services;*
 - (e) *Honor and Recognition. The program shall promote events and activities that recognize and honor wounded or disabled veterans; and*

- (f) *Facilities. The program, through grants and other sources of funding, shall provide facilities as appropriate in support of the program.*
- (4) *The Kentucky Department of Veterans' Affairs shall enter into data-sharing agreements with the United States Department of Veterans Affairs and the Department of Defense to obtain timely information with regard to the address and medical status of a Kentucky wounded or disabled veteran.*
- (5) *With the consent of a wounded or disabled veteran, the Wounded or Disabled Veterans Coordinator for the Commonwealth, or his or her designee, may obtain personal information concerning that veteran for the sole purpose of implementing the program. Under the provisions of KRS 61.878, the information shall not be subject to public disclosure.*
- (6) *The Kentucky Department of Veterans' Affairs shall promulgate administrative regulations to carry out the provisions of this section.*
- (7) *The program is authorized to accept and expend:*
 - (a) *Moneys that may be appropriated by the General Assembly; and*
 - (b) *Other moneys received from any other source, including donations and grants.*

Section 2. KRS 161.168 is amended to read as follows:

Notwithstanding any other statute to the contrary, a certified employee of a local board of education who is a member of a state National Guard or a Reserve component ordered to active military duty by the President of the United States shall be granted a leave of absence for this purpose and shall be considered to be rendering service to the state.

- (1) A local board of education that has granted military leave to a certified employee and has a commitment from the employee to return to work upon the conclusion of military leave may provide the employer's contribution toward the purchase of the state's medical insurance program during the period of military leave as long as the employee or spouse pays the additional cost of dependent coverage.
- (2) Upon the employee's return to work, the Commonwealth of Kentucky shall pay the member contribution and any accrued interest that is required to be paid under KRS 161.507(4)(b) in order for the member to receive retirement service credit for the period of active military duty. Under no circumstances shall a member be entitled to service credit under this paragraph that is in violation of the provisions of KRS 161.500. *The provision of this subsection shall be retroactive to January 1, 2003, for employees who have been deployed to active combat service.*
- (3) For each year of military service or each year of combined military and school service within a school year, the certified employee shall receive a year of service credit for purposes of the district's single salary schedule defined in KRS 157.320.
- (4) No provisions of this section shall be construed to provide disability benefits under KRS 161.611 or 161.663, survivorship benefits under KRS 161.520, life insurance benefits under KRS 161.555 or any other benefit available from the Kentucky Teachers' Retirement System as a result of active military service, or conditions or injuries resulting from active military service, except for the accrual of service credit which shall be acknowledged by the retirement system subject to the relevant conditions set forth in KRS 161.507.

Approved March 23, 2007.

CHAPTER 93

(HB 296)

AN ACT relating to workers' compensation and declaring an emergency.

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

Section 1. KRS 342.340 is amended to read as follows:

- (1) Every employer under this chapter shall either insure and keep insured his liability for compensation hereunder in some corporation, association, or organization authorized to transact the business of workers' compensation insurance in this state or shall furnish to the executive director satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due as provided for in this chapter. In the latter case, the executive director shall require the deposit of an acceptable security, indemnity, or bond to secure, to

the extent the executive director directs, the payment of compensation liabilities as they are incurred. ***A public sector self-insured employer shall not be required to deposit funds as security, indemnity, or bond to secure the payment of liabilities under this chapter, if the public employer has authority to raise taxes, notwithstanding provisions of KRS 68.245, 132.023, 132.027, and 160.470 relating to recall and reconsideration of local taxes; raise tuition; issue bonds; raise fees or fares for services provided; or has other authority to generate funds for its operation.***

- (2) Every employer subject to this chapter shall file, or have filed on its behalf, with the office, as often as may be necessary, evidence of its compliance with the provisions of this section and all others relating hereto. Any insurance carrier or self-insured group providing workers' compensation insurance coverage for a Kentucky location shall file on behalf of the employer, with the executive director, evidence of the employer's compliance with this chapter. The filing shall be made within ten (10) days after the issuance of a policy, endorsement to a policy, or similar documentation of coverage. Every employer who has complied with the foregoing provision and has subsequently canceled its insurance or its membership in an approved self-insured group, as the case may be, shall immediately notify, or have notice given on its behalf to the office of the cancellation, the date thereof, and the reasons therefor; and every insurance carrier or self-insured group shall in like manner notify the executive director upon the cancellation, lapse, termination, expiration by reason of termination of policy period, or nonrenewal of any policy issued by it or termination of any membership agreement, whichever is applicable under the provisions of this chapter, except that the carrier or self-insured group need not set forth its reasons therefor unless requested by the executive director. The above filings are to be made on the forms prescribed by the executive director. Termination of any policy of insurance issued under the provisions of this chapter shall take effect no greater than ten (10) days prior to the receipt of the notification by the executive director unless the employer has obtained other insurance and the executive director is notified of that fact by the insurer assuming the risk. Upon determination that any employer under this chapter has failed to comply with these provisions, the executive director shall promptly notify interested government agencies of this failure and, with particular reference to employers engaged in coal mining, the executive director shall promptly report any failures to the Department for Natural Resources so that appropriate action may be undertaken pursuant to KRS 351.175.

Section 2. 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, limited partnership, limited liability company, firm, association, trust, joint venture, corporation, 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, ***including the sale of produce at on-site markets and the processing of produce for sale at on-site markets***. 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, 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 Office of Employment and Training, Education Cabinet. 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 Office of Employment and Training 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; and
 - (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; and
- (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 3. KRS 304.13-167 is amended to read as follows:

- (1) Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating system filed with the executive director by an advisory organization designated by the executive director.
- (2) Every workers' compensation insurer shall report its experience in accordance with the statistical plans and other reporting requirements in use by an advisory organization designated by the executive director.
- (3) A workers' compensation insurer may develop subclassifications of the uniform classification system upon which rates may be made. These subclassifications and their filing shall be subject to the provisions of this chapter applicable to filings generally.
- (4) A workers' compensation insurer may develop rating plans which identify loss experience as a factor to be used. These rating plans and their filing shall be subject to the provisions of this chapter applicable to filings generally.
- (5) The executive director shall disapprove subclassifications, rating plans, or other variations from manual rules filed by a workers' compensation insurer if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform classification system and experience rating system and in such a fashion so as to allow for the application of experience rating filed by the advisory organization.
- (6) *The executive director shall approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers who implement a drug-free workplace program pursuant to administrative regulations adopted by the Office of Workers' Claims in the Department of Labor. The plans shall take effect January 1, 2008, shall be actuarially sound, and shall state the savings anticipated to result from such drug-free workplace programs. The credit shall be at least five percent (5%) unless the executive director determines that five percent (5%) is actuarially unsound. The executive director is also authorized to develop a schedule of premium credits for workers' compensation insurance for employers who have safety programs that contain certain criteria for safety programs. The executive director shall consult with the executive director of the Office of Workers' Claims in the Department of Labor in setting such criteria. A drug-free workplace credit under this subsection shall not be available to employers who receive a credit under KRS 304.13-412 or Chapter 351.*

Section 4. Because of the increase in the security, indemnity, and bond requirements for self-insured employers, an emergency is declared to exist, and Section 1 of this Act takes effect upon its passage and approval by the Governor or upon otherwise becoming a law.

Approved March 23, 2007.

CHAPTER 94

(HB 207)

AN ACT relating to mine safety.

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

Section 1. KRS 351.025 is amended to read as follows:

The department shall:

- (1) Promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against certified and noncertified personnel and owners and part-owners of licensed premises whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. These criteria shall include but not be limited to the following:

- (a) In the case of individuals that are certified miners, the Mine Safety Review Commission may revoke or suspend an individual's certification, or probate an individual's certification~~[for up to ten (10) working days]~~ for first offenses, and the Mine Safety Review Commission shall establish a maximum penalty for subsequent offenses;
 - (b) In the case of individuals that are owners or part-owners of licensed premises, the Mine Safety Review Commission may impose civil monetary penalties against individuals not to exceed ten thousand dollars (\$10,000); and
 - (c) In the case of noncertified personnel, the Mine Safety Review Commission may impose civil monetary fines equivalent to the value of the wages they receive for up to ten (10) working days for first offenses and the commission shall establish maximum penalties for subsequent offenses;
- (2) Notwithstanding KRS 351.070(15), promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission's imposition of penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. These penalties shall include but not be limited to the revocation or suspension of the mine's license, the probation of a mine's license~~[for a first offense]~~, or the imposition of a penalty against the licensee not to exceed the gross value of the production of the licensed premise for up to ten (10) working days;
 - (3) Direct that an employer shall not directly or indirectly reimburse a sanctioned miner or mine supervisor for days of work lost as a result of sanctions imposed by the Mine Safety Review Commission;
 - (4) Establish procedures by which the department shall communicate with the Federal Mine Safety and Health Administration (MSHA) concerning allegations of mine safety violations against Kentucky coal operators and miners **and for reports made to the Office of Mine Safety and Licensing under KRS 351.193**;
 - (5) Jointly with the Mine Safety Review Commission establish a process for referring allegations of mine safety violations to the Mine Safety Review Commission for adjudication and for the hearing of appeals from penalties imposed by the Office of Mine Safety and Licensing, and the underlying violation, authorized under KRS 351.070(15); and
 - (6) Establish procedures to distribute quarterly reports to every licensed entity describing mine fatalities, serious mine accidents, and penalties imposed on certified and noncertified personnel and licensed premises and to require the report to be distributed to every certified working miner employed by the licensed entity, posted at work sites, and reviewed at regular mine safety meetings.

Section 2. KRS 351.030 is amended to read as follows:

- (1) All administrative hearings conducted by the department shall be conducted in accordance with KRS Chapter 13B **and this section**. Following the hearing, the department shall decide each matter in controversy. No person shall be discharged or otherwise discriminated against by his or her employer for testifying, or for his failure to testify, at these hearings.
- (2) ***The executor or administrator of a deceased miner's estate, or his or her designee, in the case of a fatality, miners that are injured as a result of an accident, and miners that are significantly affected by the conduct that gave rise to a disciplinary proceeding shall be granted the right of intervention in the penalty phase of that proceeding. The petition for intervention shall be made in accordance with KRS 13B.060(3). All hearings before the Mine Safety Review Commission shall be open proceedings. Any party with pertinent information regarding a mine accident may submit that information directly to the Office of Mine Safety and Licensing's chief accident investigator.***

Section 3. KRS 351.070 is amended to read as follows:

- (1) The commissioner shall have full authority over the department and shall superintend and direct the activities of the mine inspectors and other personnel of the department. There is created within the Department for Natural Resources an Office of Mine Safety and Licensing.
- (2) The secretary shall appoint an executive director to the Office of Mine Safety and Licensing in accordance with KRS 224.10-020(2) and prescribe his powers and duties.
- (3) The commissioner may, whenever necessary, divide the coal fields of the state into as many inspection districts as necessary, so as to equalize as nearly as practicable the work of each inspector, and may assign to the inspectors their respective districts.

- (4) The commissioner may, whenever he or she deems it necessary in the interest of efficient supervision of the mines, temporarily employ the services of additional mine inspectors or change inspectors from one (1) district to another.
- (5) The commissioner shall superintend and direct the inspection of mines and cause to be investigated the character and quality of air in mines whenever conditions indicate the necessity of doing so.
- (6) The commissioner shall collect statistics relating to coal mining in the state and make an annual report of the statistics.
- (7) The commissioner shall see that maps, plans, projections, and proposed developments of all underground coal mines are made and filed in his office.
- (8) The commissioner shall keep a properly indexed, permanent record of all inspections made by himself and the personnel of the department.
- (9) The commissioner shall exercise general supervision over the training of officials and workmen in safety and first aid and mine rescue methods, and may conduct demonstrations in safety whenever he deems it advisable.
- (10) The commissioner shall exercise general supervision over the dissemination of information among officials and employees concerning mine ventilation, mining methods, and mine accidents and their prevention, and shall assume full charge in the event of mine fire or explosion or other serious accident at any mine in the state.
- (11) The commissioner may assist in the resumption of operations of any mine or gather data for the development of any coal seams that would be of any benefit to the state or create new employment.
- (12) The commissioner may prescribe reasonable safety standards governing the use of explosives, and electrical and mechanical equipment in the operation of open-pit or surface mines.
- (13) The secretary of the Environmental and Public Protection Cabinet shall have the power and authority to promulgate, amend, or rescind any administrative regulations he or she deems necessary and suitable for the proper administration of this chapter. Administrative regulations may be promulgated, amended, or rescinded by the secretary only after public hearing or an opportunity to be heard thereon of which proper notice by publication pursuant to KRS Chapter 424, has been given. Administrative regulations so promulgated shall carry the full force and effect of law.
- (14) The commissioner shall ascertain the cause or causes of any coal mining fatality ***and any accidents involving serious physical injury*** and, within sixty (60) days of completion of the investigation, shall report his or her findings and recommendations to the Governor, the Mine Safety Review Commission, the Mining Board, and the Legislative Research Commission. ***Accident interviews conducted by the Office of Mine Safety and Licensing shall be closed proceedings.*** The recommendations may include without being limited to the need to promulgate or amend administrative regulations to prevent the recurrence of the conditions causing the fatality. ***Effective January 1, 2009, the Office of Mine Safety and Licensing shall appoint an existing full-time employee to act as a family liaison. The family liaison shall have the responsibility during an accident investigation to keep the families of miners informed of the progress and findings of the accident investigation. The family liaison shall be trained in mining and in grief counseling.***
- (15) The commissioner shall assess civil monetary penalties against licensed facilities for violations of laws in this chapter and KRS Chapter 352 pertaining to roof control plans, ***mine seal construction plans, unsafe working conditions***, and mine ventilation plans that could lead to imminent danger or serious physical injury. The Environmental and Public Protection Cabinet shall promulgate administrative regulations within ninety (90) days of July 12, 2006, providing for the manner and method of the assessment of the penalties and appeals therefrom. In no event shall the civil penalty assessed pursuant to this subsection for the violation exceed five thousand dollars (\$5,000). Nothing contained in this subsection shall be construed to impair or contravene the authority granted under KRS 351.025(2) for imposing penalties against licensed facilities.

Section 4. KRS 351.090 is amended to read as follows:

- (1) The Governor shall appoint an adequate number of mine inspectors to ensure at least two (2) inspections annually ***at all surface mines***, provided the mine is in operation the entire year or the proportionate thereof, of all mines in the Commonwealth and sufficient additional inspectors to enable the commissioner to provide adequate surveillance of coal mines where conditions or management policy dictate that more inspections are needed to ensure the safety of miners; except the commissioner shall inspect all underground coal mines not less than ~~six (6) [three (3)]~~ times annually. ***Two (2) of the six (6) general inspections of underground mines***

shall be full electrical inspections. One (1) or more of the appointees ~~shall~~^{may} be designated as electrical mine inspectors. The Governor shall also appoint an adequate number of mine safety analysts and mine safety instructors. The term of office of each mine inspector, each mine safety analyst, each electrical inspector, and each mine safety instructor shall be during the period of capable, efficient service and good behavior.

- (2) All mine inspectors, mine safety analysts, electrical inspectors, and mine safety instructors shall have a thorough knowledge of first aid and mine rescue and be able to instruct in first aid and mine rescue, and shall possess thoroughly the knowledge required of the commissioner by KRS 351.060, and shall have a thorough and practical knowledge of mining gained by at least five (5) years' experience in coal mines in the Commonwealth. All surface mine safety analysts shall have at least five (5) years' experience in surface mines in the Commonwealth. For the purposes of this subsection, a degree in mining engineering from a recognized institution shall be deemed equivalent to two (2) years of practical experience in coal mines or an associate degree in mining technology from a recognized institution shall be deemed equivalent to one (1) year practical experience in coal mines. A person desiring to use a mining engineering or technology degree for practical experience credit shall file proof of having received a degree prior to examination.
- (3) No person shall be appointed to the office of mine inspector, underground mine safety analyst, electrical inspector, or mine safety instructor unless he holds a current mine foreman's certificate. No person shall be appointed to the office of surface mine safety analyst unless he holds a current surface mine foreman's certificate. A person appointed as mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall pass an examination administered by the board. The commissioner may recommend to the Governor applicants for the positions of mine inspector, mine safety analyst, electrical inspector, or mine safety instructor who have successfully passed the examination and are proved by worth, training, and experience to be the most competent of the applicants.
- (4) Mine inspectors, mine safety analysts, electrical inspectors, and mine safety instructors shall be of good moral character and temperate habits and shall not, while holding office, act in any official capacity in operating any coal mine.
- (5) No reimbursement for traveling expenses shall be made except on an itemized accounting for the expenses submitted by inspectors, analysts, and safety instructors who shall verify upon oath that the expenses were incurred in the discharge of their official duties.
- (6) Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall take oath, which shall be certified by the officer administering it. The oath, in writing, and the certificate, shall be filed in the office of the Secretary of State.
- (7) Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall give bond with surety approved by the Governor.
- (8) ***Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall provide authorization to the Office of Mine Safety and Licensing to perform a criminal background check by means of a fingerprint check by the State Police. The results of the state criminal background check shall be sent to the executive director of the Office of Mine Safety and Licensing. Any fee charged by the Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.***

Section 5. KRS 351.1041 is amended to read as follows:

- (1) The Mine Safety Review Commission is created as an independent governmental entity attached to the Environmental and Public Protection Cabinet, Office of the Secretary, for administrative purposes. The commission shall:
 - (a) Conduct hearings and issue orders regarding a licensee, coal operation, or other person involved in the mining of coal in accordance with KRS 351.194;
 - (b) Jointly with the department establish a process for the department's referral of allegations of mine safety violations, ***allegations of unsafe working conditions***, violation of a miner's drug- and alcohol-free condition of certification, or supervisory personnel's failure to immediately report a fatal accident or an accident involving serious physical injury to the commission for adjudication;
 - (c) Make any recommendations to the department that it believes appropriate upon its review, consideration, and analysis of:

1. All reports of coal mining fatalities *and serious physical injuries* provided by the commissioner under KRS 351.070(14);
 2. Any case in which a miner or a mine owner or operator, in the professional opinion of the department has a history of significant and substantial safety violations even though there has been no serious physical injury or death resulting from the violations;
 3. Any case in which a miner or a mine owner or operator has been convicted of a criminal charge for a violation of a federal mine safety standard or standards; and
 4. Any case in which the Federal Mine Safety and Health Administration has made a recommendation relating to certification of an individual certified under this chapter.
- (2) The Mine Safety Review Commission shall consist of three (3) members appointed by the Governor subject to the consent of the Senate and the House of Representatives in accordance with KRS 11.160. Of the members of the Mine Safety Review Commission first appointed under this section, one (1) shall be appointed for a term of one (1) year; one (1) shall be appointed for a term of two (2) years; and one (1) shall be appointed for a term of three (3) years. After the initial appointments, members of the board shall be appointed for terms of four (4) years. A member may be reappointed at the expiration of his or her previous term. Members shall continue to serve until a successor is appointed and qualified.
 - (3) The members of the Mine Safety Review Commission shall have the qualifications required of Judges of the Court of Appeals, except for residence in a district, and shall be subject to the same standards of conduct made applicable to a part-time judge by the Rules of the Kentucky Supreme Court. The members shall receive the per diem equivalent of the salary of a Judge of the Court of Appeals for each day spent in conducting the business of the commission.
 - (4) The Governor shall designate a member of the Mine Safety Review Commission to serve as chair and shall fill any vacancy in the office of chair.
 - (5) The Governor may remove any member for good cause, including violation of the Code of Judicial Conduct and repeated failure to perform satisfactorily the specific duties assigned in this chapter or KRS Chapter 352. The Governor may remove the member only after furnishing him or her with a written copy of the charges against that member and holding a public hearing if requested by the member.
 - (6) The commission shall meet on the call of the chair or a majority of the members of the commission.
 - (7) The Environmental and Public Protection Cabinet shall provide administrative services to the Mine Safety Review Commission. If the commission deems it necessary to employ hearing officers to assist it, the Environmental and Public Protection Cabinet shall employ hearing officers to assist the commission in accordance with KRS Chapter 13B *and this chapter*, notwithstanding the provisions of KRS 13B.030(2)(b).
 - (8) The commission may conduct hearings, compel the attendance of witnesses, administer oaths, and conduct oversight activities as may be required to ensure the full implementation of its duties.
 - (9) The department shall provide the Mine Safety Review Commission with all information requested by the commission for the fulfillment of its responsibilities under this chapter and KRS Chapter 352.
 - (10) The secretary of the Environmental and Public Protection Cabinet shall effectuate the hiring of any staff deemed necessary and affordable for the efficient operations of the Mine Safety Review Commission. This may include an executive director, general counsel, or other administrative support positions, to be appointed in accordance with KRS 12.010 and 12.050.

Section 6. KRS 351.1055 is amended to read as follows:

- (1) There is hereby established a Mine Equipment Review Panel attached to the Department for Natural Resources in the Environmental and Public Protection Cabinet.
- (2) The Mine Equipment Review Panel shall be a permanent panel of recognized experts who shall review and make recommendations *annually* to the executive director of the Office of Mine Safety and Licensing *and the Interim Joint Committee on Agriculture and Natural Resources* regarding best available mine safety technologies, including but not limited to wireless tracking and communications devices for use by miners in underground mines. *Subject to budgetary constraints and approval by the United States Mine Safety and Health Administration (MSHA), if there is no existing law to the contrary, the commissioner may implement the recommendations of the panel.* Based on the recommendations provided by the panel, the

executive director shall comprise a list of commercially available mine safety equipment, including wireless tracking and communications devices that may be approved for use by coal miners.

- (3) The panel shall meet at the call of the chair. The chair of the panel shall be the executive director of mine safety and licensing. Members of the panel shall serve without pay, but shall be entitled to reimbursement of travel-related expenses.
- (4) The Mine Equipment Review Panel shall be composed of the following members, who shall be appointed by the commissioner not less than thirty (30) days after July 12, 2006:
 - (a) One (1) member shall represent the National Institute of Occupational Safety and Health;
 - (b) One (1) member shall represent the federal Mine Safety and Health Administration;
 - (c) One (1) member shall represent the coal industry;
 - (d) One (1) member shall be appointed from the membership of the United Mine Workers of America and shall represent mine labor, preferably a member of a Kentucky mine rescue team;
 - (e) One (1) member shall represent the Department of Mining Engineering at the University of Kentucky; and
 - (f) One (1) member shall be the executive director of the Office of Mine Safety and Licensing.
- (5) The Mine Equipment Review Panel shall provide initial recommendations to the executive director of the Office of Mine Safety and Licensing not more than one hundred twenty (120) days after the panel members have been appointed and the panel is duly constituted to conduct business. Periodically, the panel shall review and make recommendations to the executive director on changes to or innovations in mine safety equipment that could be deployed in coal mines.

Section 7. KRS 351.106 is amended to read as follows:

- (1) The Mining Board shall establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. This education and training shall be provided in a manner determined by the commissioner to be adequate to meet the standards established by the board, which shall include as a minimum the requirements of KRS 351.102 and the requirements of the federal government for the training of miners for new work assignments, and at least sixteen (16) hours of annual retraining and reeducation for all certified persons, of which thirty (30) minutes annually shall be dedicated to alcohol and substance abuse education. ***Effective January 1, 2009, in addition, six (6) hours of annual training on changes in mine safety laws, safe retreat mining practices, disciplinary cases litigated before the Mine Safety Review Commission, changes in mine safety technology, and ways to improve safe working procedures shall be required for all mine foremen. This annual training for mine foremen shall be provided exclusively by the Office of Mine Safety and Licensing.***
- (2) One (1) hour of initial substance abuse training and education shall be required as part of the certified miner's first annual retraining conducted in a classroom that occurs after August 1, 2006. This requirement shall not apply to certified persons who received the one (1) hour initial substance abuse training and education as part of their forty (40) hour or twenty-four (24) hour new miner training.
- (3) In addition to the thirty (30) minutes of annual alcohol and substance abuse education required for certified miners, supervisory personnel shall be required to receive an additional thirty (30) minutes of alcohol and substance abuse awareness training annually.
- (4) Beginning with the first full calendar year after the effective date established by the board and during each calendar year thereafter, each certified miner shall receive at least sixteen (16) hours of retraining and reeducation.
- (5) Newly hired experienced miner training shall satisfy the miner's annual retraining requirement if a time lapse occurs between the miner's last training anniversary date and the next scheduled training anniversary date for the mine where he is newly employed, if the miner has complied with the annual retraining requirements within the last twelve (12) months from the date of his newly hired experienced miner training.
- (6) Retraining and reeducation sessions shall be conducted at times and in numbers to reasonably assure each certified miner an opportunity to attend.

- (7) The licensee shall pay all certified miners their regular wages and benefits while they receive training required by the department.
- (8) Willful failure of a working miner to complete annual retraining and reeducation requirements shall constitute grounds for revocation, suspension, or probation of his certificate.
- (9) If the department discovers a miner working without proper training or the licensee cannot provide proof of training, the miner shall be withdrawn immediately from the mine and the licensee shall pay the miner his regular wages until the training is administered and properly documented.
- (10) When employment is terminated, the licensee shall provide the employee a copy of his training records, upon request. If the employee does not request his training records immediately, the licensee shall, within fifteen (15) days, provide the employee with those training records.
- (11) The board may, upon its own motion or whenever requested to do so by the commissioner, deem applicable certificates issued by other states to be proof of training and education equal to the requirements of KRS 351.102 or deem training provided by appropriate federal agencies to be adequate to meet training and education requirements established by the board, if the training and education meet the minimum requirements of this chapter.
- (12) The secretary may promulgate administrative regulations necessary to establish a program to implement the provisions of this chapter according to the criteria and standards established by the board. This program shall include but not be limited to implementation of a program of instruction and the conduct of examinations to test each applicant's knowledge and understanding of the training and instruction.
- (13) The commissioner shall keep and maintain current records on all certified miners, all of which shall be maintained by computer for ready access. *The commissioner shall not grant certification to any person that, at the time of application, had his or her miner certification, foreman certification, electrician certification, or any other mining specialty certification suspended or revoked by another state. If a person has his or her miner certification, foreman certification, electrician certification, or other mining specialty certification probated in another state, the commissioner or the Mining Board may, at his or its discretion, grant the equivalent certification. However, that certification shall be placed on probation in Kentucky until the probationary period in the other state has expired.*
- (14) The commissioner is authorized and directed to utilize state mine inspectors, mine safety instructors, the state mine foreman examiner, private and public institutions of education, and other qualified persons available to him in implementing the program of instruction and examination.
- (15) The commissioner may make recommendations to the board as he may deem appropriate. The commissioner shall provide information to the board at the board's request. The commissioner is authorized and directed to utilize state and federal moneys and personnel that may be available to the department for educational and training purposes in the implementation of the provisions of this chapter.
- (16) All training and education required by this section may be conducted in classrooms, on the job, or in simulated mines.

Section 8. KRS 351.127 is amended to read as follows:

- (1) ~~[A-]~~ Certified emergency medical ~~technicians~~~~[technician]~~ or mine emergency ~~technicians~~~~[technician]~~ shall be employed at every licensed coal mine whose employees are actively engaged in the extraction, production, or preparation of coal. Persons employed as mine emergency technicians shall be trained in a manner established in an administrative regulation promulgated by the department. Persons seeking certification as a mine emergency medical technician or mine emergency technician shall be subject to the following additional requirements:
 - (a) All persons seeking certification as a mine emergency technician shall demonstrate drug- and alcohol-free status in accordance with KRS 351.182 and 351.183;
 - (b) The drug and alcohol testing for those seeking certification as mine emergency technicians shall be administered prior to the examination for the certification, in accordance with KRS 351.182 and 351.183; and
 - (c) Certification as a mine emergency technician shall not be issued until the results of the drug and alcohol testing have been obtained. Notification shall be given to the person in accordance with KRS 351.184.

- (2) These emergency medical technicians or mine emergency technicians shall be employed in the following manner:
 - (a) ~~At least two (2) [One (1)] emergency medical [technician] or mine emergency technicians [technician]~~ shall be employed on every shift **engaged in the production of coal, and at least one (1) emergency medical or mine emergency technician shall be employed on every nonproduction shift** ~~with a workforce of up to fifty (50) employees~~;
 - (b) **For underground mines, at least one (1) of the two (2) emergency or mine emergency technicians shall be underground at all times while miners are working in the mines.** An additional emergency medical technician or mine emergency technician shall be employed for every additional fifty (50), or any portion thereof, employees per shift who are actively engaged in the extraction, production, or preparation of coal.
- (3) If these emergency medical technicians or mine emergency technicians are also employed in other capacities at the coal mine, they shall be available for quick response to emergencies and shall have available to them at all times the equipment necessary to respond to emergencies, as prescribed by the commissioner.
- (4) If the licensee selects existing employees to be trained as emergency medical technicians or mine emergency technicians, the employees selected shall be paid their regular wages during training.
- (5) Certified emergency medical technicians and mine emergency technicians shall receive annual retraining in the manner established in an administrative regulation promulgated by the department, during which they shall receive their regular wages.

Section 9. KRS 351.140 is amended to read as follows:

Each mine inspector shall give his entire time and attention to the duties of his office, which shall consist of the following:

- (1) Inspecting mines and aiding, under the direction of the commissioner, in carrying out and enforcing the provisions of the law relating to the inspection of mines;
- (2) Training officials and workmen in and about the mines in first aid and mine rescue methods;
- (3) Advising officials and workmen in methods pertaining to safety in all its phases and in methods pertaining to the prevention of mine fires and explosions;
- (4) Taking charge of mine rescue and recovery work whenever a mine fire, mine explosion or other serious accident occurs within his district, and the commissioner is not present, and assisting in such work in other districts when so directed by the commissioner;
- (5) Reopening mines or portions of mines that have been sealed on account of fire or any other cause, when directed by the commissioner to do so;
- (6) Inspecting each underground coal mine in his district at least ~~six (6) [three (3)]~~ times a year and all other mines once every six (6) months. **For underground coal mines, two (2) of the six (6) general inspections conducted annually shall be full electrical inspections.** The commissioner may cause inspections more often if practicable and if funds permit, and whenever any danger to the workmen may exist; making a personal examination of the interior of each mine with respect to ventilation, drainage, roof control, blasting, electricity, escapeways, and general security, and also a personal examination of the outside facilities of the mine; and in gassy mines below the water table, inspections shall be more frequent, and as often as practical whenever any danger to workmen is indicated by a previous inspection. Such inspections shall involve at least two (2) inspectors. The inspectors shall locate themselves in different sections of the mine in order to determine the effectiveness and reliability of the ventilation system. Each section of the mine shall be so inspected;
- (7) It shall be permissible for a mine inspector to inspect any coal preparation plant or surface facility of any mining operation of coal including any overland coal belts; and
- (8) A mine inspector shall have the express authority to enter upon the premises of and inspect any coal mine, including any overland coal belts, at any reasonable time.

Section 10. KRS 351.175 is amended to read as follows:

- (1) The operation of a coal mine in Kentucky is a privilege granted by the Commonwealth of Kentucky to a licensee who satisfies the requirements of this section and demonstrates that the mine is or will be operated in a safe manner and in accordance with the laws of this Commonwealth.
- (2) Within forty-five (45) days after January 1, 1953, and of each year thereafter, the owner, operator, lessee, or licensee of each mine shall procure from the department a license to operate the mine, and the license shall not be transferable. Any owner, operator, lessee, or licensee who assumes control of a mine, opens a new mine, or reopens an abandoned mine during any calendar year shall procure a license before mining operations are begun.
- (3) The license shall be in printed form as the commissioner may prescribe and when issued shall be kept posted at a conspicuous place near the main entrance of the mine.
- (4) Requests for a license shall be made to the department and shall be accompanied by a United States postal money order or cashier's check drawn in favor of the State Treasurer in an amount established by administrative regulations of a minimum of one hundred dollars (\$100) and a maximum of fifteen hundred dollars (\$1,500). The license shall be issued when the following are properly submitted to the commissioner:
 - (a) The annual report of the licensee and the annual mine map required in KRS 351.170 and 352.450;
 - (b) A certification from the executive director of the Office of Workers' Claims that the licensee has provided positive proof of compliance with the provisions of KRS Chapter 342;
 - (c) A certification from the commissioner of the Department of Revenue that the licensee is not a "delinquent taxpayer" as defined in KRS Chapter 131;
 - (d) ***Mine seal construction plan filed with the state and approved by MSHA;***
 - (e) ***Roof control plan filed with the state and approved by MSHA;***
 - (f) The ventilation plan required in KRS 352.020; and
 - (g)~~(e)~~ An approved emergency action plan required by KRS 352.640.
- (5) The department shall immediately revoke any license if the department receives:
 - (a) Withdrawal of the certification of compliance with KRS Chapter 342 issued by the executive director of the Office of Workers' Claims; or
 - (b) Notice from the commissioner of the Department of Revenue that the licensee is a "delinquent taxpayer" as defined in KRS Chapter 131.
- (6) The commissioner, the executive director of the Office of Mine Safety and Licensing, or the mine inspector shall have the authority to stop production or close any mine whose operator fails to procure a license or fails to furnish a certification of workers' compensation coverage as required under this section.
- (7) The department shall be authorized to seek injunctive relief for any violation of this section. Revocation of a license by the department shall be an administrative function of the department. Appeals from revocation by the department shall be brought in Franklin Circuit Court.
- (8) A license which has been revoked under the "delinquent taxpayer" provision shall not be reissued until a written tax clearance has been received from the commissioner of revenue.
- (9) No mine underlying a cemetery shall be licensed by the commissioner unless two-thirds (2/3) of the governing body of that cemetery vote in approval of the operation. The application for a license shall contain an affidavit setting forth the approval of the cemetery's governing body. This subsection applies only to those cemeteries with governing bodies.

Section 11. KRS 351.194 is amended to read as follows:

- (1) The Mine Safety Review Commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish administrative hearings procedures to be followed in determining if violations of mine safety laws, including, but not limited to, violations that meet the criteria established in KRS 351.025(1) or (2), have occurred and to establish a process to review recommended orders from any hearing officers acting on behalf of the commission. The procedures shall follow the requirements of KRS Chapter 13B ***and this chapter.***

- (2) The chair or a majority of the Mine Safety Review Commission may convene a meeting of the commission at which it shall consider whether to schedule a hearing regarding any licensee, coal operation, or other person involved in the mining of coal.
- (3) If the commission determines that there is probable cause to believe that the licensee, coal operation, or other person against whom the department has made allegations of unsafe work practices or other violation of applicable law is guilty of an alleged violation, the commission shall schedule a hearing at which the department shall offer evidence in support of the allegations made by it. The licensee, coal operation, or other person against whom the allegations are made shall be given not less than twenty (20) days' written notice of the charges against him, together with the date, time, and place at which the charges shall be heard, and of his opportunity to be represented by counsel, produce evidence and witnesses on his behalf, and examine the evidence and documents that may be produced against him. The commission may also be represented by counsel and shall not be bound by the technical rules of evidence, but its order shall be based upon competent evidence. Any licensee or other person summoned to appear at a hearing in the manner established in this subsection may, in writing, waive the notice required to be given to him.
- (4) The commission may proceed with its hearing of charges made by the department against any licensee, coal operation, or other person who, after being duly notified in accordance with the requirements of this section, fails to appear at or participate in the hearing and who fails to assert any legitimate basis for the failure.
- (5) Within ninety (90) days after hearing, the commission shall issue an order in which it sets out its determinations concerning each matter coming before it. Copies of the order shall be provided to all parties to the hearing. The department shall carry out or enforce, as appropriate, the order of the commission, which may include, though not be limited to, the imposition of civil penalties, revocation, suspension, or probation of the mine license or the miner's certification.
- (6) The commission may modify a civil penalty or fine established under this chapter, under criteria established by the commission by administrative regulations.
- (7) In assessing monetary penalties within the limits provided in KRS 351.025, the commission shall consider the operator's history of previous violations, the appropriateness of the penalty to the size of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation, and whether a penalty has been imposed by the Federal Mine Safety and Health Act for a violation that arose out of the same set of facts or circumstances.
- (8) An appeal of an order of the commission shall be filed in the Franklin Circuit Court within thirty (30) days of entry of the order.

Section 12. KRS 352.020 is amended to read as follows:

- (1) A mine ventilation plan and any revision of an existing mine ventilation plan shall be suitable to the ventilation conditions and mining system of each mine. The mine ventilation plan and any revisions to the mine ventilation plan approved by the United States Mine Safety and Health Administration shall be submitted to the executive director or his or her authorized representative and incorporated into the license. All mine ventilation plans shall be set forth in printed form. The mine ventilation plan shall require the air quality throughout the mine to contain at least nineteen and one-half percent (19.5%) oxygen and not more than one-half of one percent (0.5%) of carbon dioxide, and the volume and velocity of the air current shall be sufficient to dilute, render harmless, and carry away flammable, explosive, noxious, and harmful gases and dust, smoke, and fumes. A copy of the mine ventilation plan and any revisions to that plan shall be available to the miners and their representatives.
- (2) The ventilation of all underground coal mines shall be produced by means of mechanically operated fans located outside the mine in fireproof housing and offset at least fifteen (15) feet to one (1) side or above the opening, protected by explosion doors or weak walls and arranged so that ventilating current may be reversed if necessary. The fan shall be installed so as to prevent recirculation of mine air. The main fan shall be operated from a power circuit independent from the mine circuit. If inside auxiliary fans are required to ventilate working places the commissioner must first approve the installation.
- (3) The licensee, superintendent, or foreman of every coal mine worked by shaft, slope, or drift shall provide and maintain for every mine two (2) separate and distinct escapeways, one (1) of which is vented by the intake air. However, if a mine was originally licensed prior to January 1, 1990, the commissioner may approve an

alternate ventilation plan. Each active working section shall be ventilated by a separate split of intake air. In all mines the quantity of air passing through the last open crosscut between the intake and return in any pair or sets of entries shall be not less than nine thousand (9,000) cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. All working faces from which coal is being cut, mined, or loaded in a working section between the intake and return airway entries shall be ventilated with a minimum quantity of three thousand (3,000) cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. The quantity of air reaching the last crosscut in pillar sections may be less than nine thousand (9,000) cubic feet of air per minute if at least nine thousand (9,000) cubic feet of air per minute is being delivered to the intake of the pillar line. The air current shall under any conditions have a sufficient volume and velocity to reduce and carry away smoke from blasting and any flammable or harmful gases.

- (4) All mines shall maintain at least nine thousand (9,000) cubic feet of air per minute at the points mentioned in subsection (3) of this section. The commissioner shall have the authority to require additional air in any mine when he deems it necessary for the safety of the employees.
- (5) When the air from a split has passed through and has ventilated all the working places in an air split of a mine it shall then be designated as return air. Return-air courses shall not be designated as primary escapeways.
- (6) As working places advance, breakthroughs for air shall be made not more than ninety (90) feet apart, except that where longwall or modern systems of mining are used the commissioner or his authorized representative may approve a greater distance between breakthroughs or the method of ventilating such longwall or modern systems of mining. If any breakthroughs between intake and return airways are not required for the passage of air or the travel of equipment, they shall be closed with stoppings. All permanent stoppings shall be substantially built with suitable incombustible or fire resistant material subject to the approval of the mine inspector so as to keep the working places well ventilated. All brattice cloth and ventilation tubing shall be flame resistant. Doors on the main haulways shall be avoided where practicable, and overcasts, built of concrete or other suitable material and of ample strength, shall be adopted. Where doors are used they shall be built in a substantial manner, and shall be hung so as to close automatically when unobstructed.
- (7) In a mine where methane can be found to an extent of one percent (1%) or more on the return of any one (1) split, the inspector, with the approval of the commissioner may require the mine to be ventilated by the exhaust system, requiring the haulage roads and all feed wires to be located on the intake air and the electrical system to be so arranged that no wires carrying electrical current shall be on return air. A period of not more than ninety (90) days from date of notification shall be allowed to make the changes required.
- (8) The ventilation plan shall require all fans utilized in the ventilation plan to be in *continuous* operation *unless the fan must be turned off for repairs or maintenance, during which time all persons must be withdrawn from the mine. After the mine fan is restarted following the completion of repairs or maintenance, it must be in operation for a sufficient period to ensure air quality and the equalization of the mine atmosphere*~~for a sufficient period to ensure air quality and equalization of the mine atmosphere prior to the entry of workers into underground areas~~. *Within fifteen (15) minutes after a fan has been unintentionally stopped, all miners must begin withdrawing from the mine. If the fan is restarted before the miners reach the surface, the miners shall remain at the point of their retreat and the area inby shall be preshifted prior to the miners returning to the section.*

Section 13. KRS 352.090 is amended to read as follows:

- (1) All unused workings and abandoned parts of mines shall be protected by safeguards that will prevent the accumulation or overflow of gas, and all avenues leading thereto shall be so arranged and conducted as to give warning to all persons of the danger of entering, and notice shall be posted warning all unauthorized persons not to enter these parts of the mine. If the area cannot be adequately ventilated, and examined, or evaluated it shall be sealed in a timely manner.
- (2) No person, except persons authorized to make examination thereof, shall enter any unused or abandoned part of a mine after the warning has been posted.
- (3) Where the practice is to seal abandoned workings, the sealing shall be done *in accordance with a mine seal construction plan approved by MSHA and submitted to the Office of Mine Safety and Licensing. Seal construction shall be done* immediately in an effective manner with noncombustible material. In every sealed area, one (1) or more of the seals shall be fitted with a pipe and cap or valve to permit the gases behind the seals to be sampled and also to provide a means of determining any existing hydrostatic pressure. When

required by the mine inspector and commissioner, drill holes shall be extended from the surface to the sealed area, or vent pipes shall be extended from the sealed area to a return air course. Sufficient ventilation shall be provided at each seal to prevent dangerous gases from accumulating.

Section 14. KRS 352.133 is amended to read as follows:

- (1) All underground miners shall be provided with an approved self-contained self-rescuer device and shall have that device within twenty-five (25) feet of them at all times. The self-contained self-rescuer shall be provided to the miners by the licensee at no cost to the miners.
- (2) In addition to the requirements for self-contained self-rescuers set forth in this section, all licensed premises shall maintain caches of self-contained self-rescuer devices which shall be stored in locations readily accessible to the primary and secondary escapeways or provide proof of an order for self-contained self-rescuers through the submission of a valid purchase order that clearly names the vendor, contact information for the vendor, the number of devices purchased, and the date of the order, which shall not be later than thirty (30) days after July 12, 2006. In all cases, the self-contained self-rescuers shall be in place by July 1, 2007, or shall be extended by the commissioner upon substantiated proof of unavailability.
 - (a) The caches shall be maintained in sufficient numbers and locations determined in accordance with the most recent rules, standards, and regulations issued by the United States Mine Safety and Health Administration *and this section*.
 - (b) The caches shall be maintained in storage units capable of protecting the self-contained self-rescuers from water, dust, and any other condition which will cause deterioration of the self-contained self-rescuers.
 - (c) The storage unit locations shall have reflective signs that read "SELF-RESCUERS" conspicuously posted as to be visible from the primary and secondary escapeways. ~~Intrinsically safe strobe light devices also shall be attached to the storage unit. The strobe light devices may operate continuously or shall be capable of activation in the event of a mine emergency.~~
 - (d) In addition to the requirements set forth in this section for self-contained self-rescuers, the mine operator shall provide for each person who is underground at least one (1) additional self-contained self-rescuer device which provides protection for a period of one (1) hour or longer, to cover all persons in the mine.
 - (e) If a mantrip or mobile equipment is used to enter or exit the mine, additional self-contained self-rescuer devices, each of which provides protection for a period of one (1) hour or longer, shall be available for all persons who use the transportation from portal to portal.
- (3) It shall be a Class D felony for any person to remove a self-rescuer from the cache for purposes other than use during an emergency, or for repair, maintenance, or replacement or as authorized by the licensee.

Section 15. KRS 352.135 is amended to read as follows:

In all designated escapeways, each operator shall provide lifeline cords, with attached reflective material at not to exceed twenty-five (25) foot intervals and devices indicating the direction to the surface at not to exceed one hundred (100) foot intervals, from outby the loading point; provided, that in case of a shaft mine, such lifeline cords shall extend from outby to the loading point to the bottom of the designated escape shaft. Such lifeline cord shall be of ~~flame resistant material~~ ~~[durable construction]~~ sufficient to allow miners to see and to use effectively to guide themselves out of the mine in the event of an emergency. *All lifeline cords shall be made of flame resistant material within one hundred eighty (180) days of the effective date of this section.*

Section 16. KRS 352.145 is amended to read as follows:

- (1) No employee of a surface coal mining operation shall be assigned, allowed, or required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless he can communicate with others, can be heard, or can be seen.
- (2) At stockpiles with underground feeders or draw-off tunnels, the licensee shall install and maintain a visible warning device that shall be activated when the feeders are in operation.
- (3) The operator's cab of all equipment being operated on or in the immediate area of a stockpile with underground feeders or draw-off tunnels shall be enclosed by a compartment and shall be furnished with a self-contained self-rescuer that is capable of providing oxygen for a period of not less than one (1) hour.

- (4) On all haulage roadways, berms, guardrails, concrete barriers, or other suitable devices shall be installed in such a manner that they extend to at least the mid-wheel height of the highest vehicle or equipment that regularly travels that type of roadway.
- (5) *A surface preshift examination shall be conducted within three (3) hours prior to men working. A certified foreman shall check the areas where men are required to work or travel during the shift. Roadways, pit areas, highwalls, and dumping points shall be checked. If any hazardous conditions are found, they shall be corrected prior to men working in the area. A suitable record book shall be kept in the control of the mine foreman. Immediately after the examination of the mine or portion thereof, the mine foreman shall enter and sign a record of the examination in the book with ink. The record shall clearly show any danger discovered at the mine, and the action taken to correct the dangerous conditions. The record book shall, at all times during the working hours, be accessible to the mine inspector or analyst and the miner or his representative.*
- (6) *All equipment operators shall conduct a preoperational check of their equipment. All preoperational checks shall be recorded by the equipment operator and kept with the equipment and, if a hazard is found to exist on any piece of equipment that would render it unsafe to operate, the hazardous condition shall be reported to the mine foreman or mine superintendent. All appropriate repairs shall be made before the equipment is put back into operation, except for moving the equipment to a safe place for repairs. The record book of all hazardous conditions and repairs made shall be kept in the control of the mine foreman or mine superintendent at all times.*

Section 17. KRS 352.150 is amended to read as follows:

- (1) After June 16, 1972, on single-track haulage roads in mines, which the persons employed in the mine must use while performing their work or while traveling on foot to and from their work, there shall be places of refuge on one (1) side not less than five (5) feet in depth from the side of the mine car, and five (5) feet wide, and not more than ninety (90) feet apart. Refuge holes of the same dimensions shall also be provided at switch throws.
- (2) Special places of refuge are not required on haulage roads on which room necks or breakthroughs occur at regular intervals not exceeding ninety (90) feet, and thus furnish places of refuge, or on haulage roads in which the track is so laid as to give a minimum clearance on one (1) side of not less than thirty (30) inches from the side of any haulage engine or any mine car, the clearance to be on the side of the road opposite that upon which electric wires are strung, if electric wires are strung in the road.
- (3) No unauthorized person shall travel on foot to or from work upon any haulage road or slope where transportation is by track, when other roads in proper condition for travel are available.
- (4) On all main haulage roads where hauling is done by machinery the mine foreman shall provide a proper system of signals, and a conspicuous light or marker approved by the commissioner on the front and rear of every trip or train of cars when in motion in the mine.
- (5) Mantrips shall be operated at safe speeds consistent with the condition of roads and type of equipment used and shall be so controlled that they can be stopped within the limits of visibility, in no event at a speed in excess of twelve (12) miles per hour.
- (6) Each mantrip consisting of more than one (1) mine car of men shall be under the charge of a certified official, and it shall be operated independently of any loaded trip of coal or other material.
- (7) Cars on the mantrip shall not be overloaded, and sufficient cars in good mechanical condition shall be provided.
- (8) No material or tools except small hand tools shall be transported in the same car with men on any mantrip unless in a separate, enclosed compartment of the car, and all persons shall ride inside of mantrip cars, except the motorman and brakeman or trip rider.
- (9) Men shall not load or unload before the cars in which they are to ride or are riding come to a full stop, and men shall proceed in an orderly manner to and from mantrips.
- (10) A waiting station shall be provided where men are required to wait for mantrips or man-cages. It shall have sufficient room, ample clearance from moving equipment, and adequate seating facilities.
- (11) Power wires shall be guarded effectively at mantrip stations where there is a possibility of any person coming in contact with energized electric wiring while loading or unloading from the mantrip.

- (12) Cars used for transporting men on slopes shall be equipped with a safety device capable of stopping the trip in event of failure of the rope or couplings. The device shall be approved by the commissioner.
- (13) Where belts are used for transporting men, unless the commissioner finds that a safety hazard exists which cannot be corrected, the belt transport will be allowed, and a minimum clearance of eighteen (18) inches shall be maintained between the belt and the roof or cross bars, projecting equipment, cap pieces, overhead cables, wiring, and other objects; but where the height of the coal bed permits, the clearance shall not be less than twenty-four (24) inches.
- (14) Unless a greater speed is allowed by special permission from the commissioner, in which event the conditions, limitations, and rules imposed in connection with the grant of permission shall be observed, the belt speed shall not exceed two hundred fifty (250) feet per minute where the minimum overhead clearance is eighteen (18) inches, or three hundred (300) feet per minute when the minimum overhead clearance is twenty-four (24) inches, while men are loading, unloading, or being transported.
- (15) The space between men riding on a belt line shall not be less than six (6) feet.
- (16) Loading and unloading stations shall be illuminated properly.
- (17) A certified official or some other supervisory personnel appointed by the mine foreman shall supervise all mantrips.
- (18) At all mines utilizing track haulage or transportation, there shall be developed a safe and uniform system of traveling through all switch points to prevent collisions. This system shall be designed in a manner which ensures that all persons can determine who has the right of way in all circumstances. Information concerning this system shall be included in annual retraining.
- (19) Efficient equipment, either mobile or self-propelled, equipped with sufficient first-aid equipment and supplies, shall be available on all underground sections where men are present to transport *all* injured workers to the surface.
- (20) At those mines that do not have a contract or other arrangement for providing ambulance service, a 4-wheel-drive vehicle or other vehicle suitable to the terrain equipped with sufficient first-aid equipment and supplies shall be available to the mines or preparation facilities for the transportation of injured workers. At those mines that have a contract or other arrangement for providing ambulance service, the access road to the mine or preparation facility shall be kept in a condition which is passable by the ambulance vehicle or other emergency rescue equipment.
- (21) The commissioner shall be empowered to draft additional administrative regulations providing for transportation of men when necessary.

Section 18. KRS 352.170 is amended to read as follows:

- (1) All underground mines shall be worked exclusively by the use of approved electric lamps for personal lighting.
- (2) *A mine operator shall provide an MSHA-approved, handheld, multi-gas detector that can measure methane, oxygen, and carbon monoxide to each group of two (2) or more miners working in close proximity of each other underground, the foreman, fireboss, and to each person who works alone, such as pumpers, examiners, and outby miners. The mine operator shall make available one (1) multi-gas detector at the working face for use by any miner working on the section. Miners shall be trained in the proper use and calibration of the multi-gas detectors and shall document that the training has been provided. Signs shall be prominently posted at places miners gather with instructions on the proper use of multi-gas detectors.*~~[All mine foremen and fire bosses employed in mines shall carry approved gas detection devices for the purpose of detecting the presence of explosive and dangerous gases and deficiencies of oxygen].~~
- (3) No person shall at any time carry into any mine any intoxicants. No person shall at any time enter any underground mine with matches, pipes, cigars, cigarettes, or any device for making lights or fire not authorized or approved, and the licensee shall at frequent intervals search, or cause to be searched, any person entering or about to enter the mine or inside the mine, to prevent the person from taking, carrying, or using the articles therein.

Section 19. KRS 352.180 is amended to read as follows:

- (1) Whenever a serious physical injury or loss of life occurs in a mine or in the machinery connected therewith or whenever a fire, explosion, entrapment of an individual for more than thirty (30) minutes, inundation of a mine by water or gases, ~~or other serious accident~~ occurs, the superintendent of the mine, or, if he is absent, the mine manager, or if he is absent, the mine foreman in charge of the mine or his designee, shall within fifteen (15) minutes of having actual knowledge of the occurrence and access to the communication system as required under KRS 352.630(3) give notice to the department and to the representative of the miner, stating the particulars of the accident. No person shall alter the scene of a mining accident in a manner that will interfere with the department's investigation of the accident, except to the extent necessary to rescue an individual or to eliminate an imminent danger.
- (2) Upon receipt of notification of an occurrence set forth in subsection (1) of this section, the mine inspector shall immediately go to the scene of the accident and make an investigation and suggestions and render the assistance as he deems necessary for the future safety of the employees, investigate the cause of the fire, explosion, or accident, make a record thereof, and forward it to the commissioner.
- (3) The record of the investigations shall be preserved with the other records of the commissioner's office. To aid in making the investigations, the commissioner or the mine inspector may compel the attendance of witnesses and administer oaths.
- (4) Failure to comply with the reporting requirements set forth in this section shall create a rebuttable presumption of an intentional order to violate mine safety laws that places miners in imminent danger of serious physical injury or death and shall be subject to revocation, suspension, or probation of the mine license and a civil monetary penalty of not less than ten thousand dollars (\$10,000) nor more than one hundred thousand dollars (\$100,000).
- (5) The Office of Mine Safety and Licensing may require testing of certified persons to determine whether the presence of intoxicants or controlled or illicit substances are a contributing factor in any mine accident in which serious physical injury or loss of life occurs or which was reported under this section. The executive director or his designee may order the testing of certified persons who:
 - (a) Were working in the immediate area of the accident; or
 - (b) In the judgment of the executive director or his designee, may reasonably have contributed to or witnessed the accident or fatality.
- (6) The post-accident testing permitted by subsection (5) of this section shall:
 - (a) Meet all guidelines set forth in KRS 351.182, 351.183, 351.184, and 351.185;
 - (b) Be paid for by the Office of Mine Safety and Licensing; and
 - (c) Be performed on samples obtained within eight (8) hours of the accident.
- (7) Toxicology screens and eleven-panel drug testing shall be performed on victims when death occurs on mine property. The testing pursuant to this subsection may be performed on specimens of either blood, saliva, or other appropriate bodily fluids.

Section 20. KRS 352.180 is amended to read as follows:

- (1) Whenever a serious physical injury or loss of life occurs in a mine or in the machinery connected therewith or whenever a fire, explosion, entrapment of an individual for more than thirty (30) minutes, inundation of a mine by water or gases, or other serious accident occurs, the superintendent of the mine, or, if he is absent, the mine manager, or if he is absent, the mine foreman in charge of the mine or his designee, shall within fifteen (15) minutes of having actual knowledge of the occurrence and access to the communication system as required under KRS 352.630(3) give notice to the department and to the representative of the miner, stating the particulars of the accident. No person shall alter the scene of a mining accident in a manner that will interfere with the department's investigation of the accident, except to the extent necessary to rescue an individual or to eliminate an imminent danger.
- (2) Upon receipt of notification of an occurrence set forth in subsection (1) of this section, the mine inspector shall immediately go to the scene of the accident and make an investigation and suggestions and render the assistance as he deems necessary for the future safety of the employees, investigate the cause of the fire, explosion, or accident, make a record thereof, and forward it to the commissioner.

- (3) The record of the investigations shall be preserved with the other records of the commissioner's office. To aid in making the investigations, the commissioner or the mine inspector may compel the attendance of witnesses and administer oaths.
- (4) Failure to comply with the reporting requirements set forth in this section shall create a rebuttable presumption of an intentional order to violate mine safety laws that places miners in imminent danger of serious physical injury or death and shall be subject to revocation, suspension, or probation of the mine license and a civil monetary penalty of not less than ten thousand dollars (\$10,000) nor more than one hundred thousand dollars (\$100,000).
- (5) The Office of Mine Safety and Licensing may require testing of certified persons to determine whether the presence of intoxicants or controlled or illicit substances are a contributing factor in any mine accident in which serious physical injury or loss of life occurs or which was reported under this section. The executive director or his designee may order the testing of certified persons who:
 - (a) Were working in the immediate area of the accident; or
 - (b) In the judgment of the executive director or his designee, may reasonably have contributed to or witnessed the accident or fatality.
- (6) The post-accident testing permitted by subsection (5) of this section shall:
 - (a) Meet all guidelines set forth in KRS 351.182, 351.183, 351.184, and 351.185;
 - (b) Be paid for by the Office of Mine Safety and Licensing; and
 - (c) Be performed on samples obtained within eight (8) hours of the accident.
- (7) Toxicology screens and eleven-panel drug testing shall be performed on victims when death occurs on mine property. The testing pursuant to this subsection may be performed on specimens of either blood, saliva, or other appropriate bodily fluids.
- (8) ***The commissioner or his or her authorized representative may compel the attendance of witnesses and administer oaths to investigate allegations of unsafe mining conditions or violations of mining laws even if no accident or injury has occurred.***

Section 21. KRS 352.201 is amended to read as follows:

- (1) The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revision thereof suitable to the roof conditions and mining system of each mine and approved by the commissioner or his authorized representative shall be adopted and set out in printed form within six (6) months after June 16, 1972, and shall be kept on file in the district office of the district where the mine is located. The plan shall show the type of support and spacing approved by the commissioner. No person shall proceed beyond the last permanent support unless adequate temporary support is provided. A copy of the plan shall be furnished the commissioner or his authorized representative and shall be available to the miners and their representatives.
- (2) The method of mining followed in any mine shall not expose the miner to unusual dangers from roof falls caused by excessive widths of rooms and entries or faulty pillar recovery methods.
- (3) The licensee, in accordance with the approved plan, shall provide at or near each working face and at other locations in the mine as the commissioner or his authorized representative may prescribe an ample supply of suitable materials of proper size with which to secure the roof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed, and in other circumstances that may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. Except in the case of recovery work, supports knocked out shall be replaced promptly.
- (4) Roof bolt recovery for reuse shall not be permitted.
- (5) Where workmen are exposed to danger from falls of roof, face, and ribs they shall examine and test the roof, face, and ribs before any other work is performed or machinery is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately.

- (6) ***Within forty-eight (48) hours before the commencement of any retreat mining or pillaring operations, the mine operator shall notify the Office of Mine Safety and Licensing of its intention of beginning or resuming retreat mining or pillaring. The Office of Mine Safety and Licensing shall document such notification in writing. Upon such notification within the forty-eight (48) hour period from a mine operator, and before retreat mining or pillaring operations can begin, the office shall ensure that every person who will be participating in the retreat mining operations is trained in the operator's pillar removal plan.***

Section 22. KRS 352.220 is amended to read as follows:

For purposes of this section, "approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department of Mines and Minerals or accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration; "suitable" means a design, material, or installation that meets the requirements of its intended use or that is accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration.

- (1) The following shall apply to underground installations:

- (a) Nonconductive or insulated materials shall be used when trailing cables or high voltage feeder cables are suspended;
- (b) Suitable circuit-interrupting devices shall be provided for all power circuits and equipment at the mine;
- (c) All power wires and cables shall be properly insulated and protected by proper installation or guarding;
- (d) Ground wires for circuits shall have a total cross-sectional area of not less than one-half (1/2) the power conductor;
- (e) Extra length or long trailing cables shall be spread out in long open loops or in a figure-eight configuration on a clean, well rock-dusted floor where the cable can be protected against mechanical injury, but cables suspended in long open loops shall be acceptable;
- (f) One (1) temporary splice may be made in any trailing cable. No temporary splice shall be made in a trailing cable within twenty-five (25) feet of the machine except cable reel equipment. Splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Splices made in cables shall provide continuity of all components;
- (g) Three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from that circuit;
- (h) The frames of hand-held electrically driven tools shall be properly grounded or double-insulated by design. The frames of all pumps shall be properly grounded. Hand-held tools and all pumps shall be properly protected by suitable fuses, circuit breakers, or other no less effective devices to provide the minimum overload and shortcircuit protection required by the department;
- (i) All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work under or pass under them unless they are six and one-half (6-1/2) feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with other circuits. Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor, with one (1) or more ground conductors having a total cross-sectional area of not less than one-half (1/2) the power conductor, and with an insulated internal conductor not smaller than No. 10 (AWG) or an insulated external conductor not smaller than No. 8 (AWG) for the ground continuity check circuit. All cables shall be suitable for the current and voltage and shall be properly maintained;
- (j) Power circuits shall have suitable disconnecting devices and short-circuit protective devices at or near the supply end of the circuit. Suitable disconnecting devices shall be provided at the beginning of all branch circuits;

- (k) Underground transformer stations, battery charging stations, substations, rectifiers, and water pumps shall be housed in noncombustible structures or areas or be equipped with a suitable fire suppression system.
1. When a noncombustible structure or area is used, these installations shall be:
 - a. Ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places; or
 - b. Ventilated with intake air that is monitored for carbon monoxide or smoke by an atmospheric monitoring system (AMS) installed and operated in a suitable manner. Monitoring of intake air ventilating battery charging stations shall be done with sensors not affected by hydrogen; or
 - c. Ventilated with intake air and equipped with sensors to monitor for heat, carbon monoxide, or smoke.
 2. The sensors used for monitoring shall de-energize power to the installation, activate a visual and audible alarm located outside of and on the intake side of the enclosure, and activate doors that will automatically close when any of the following occurs:
 - a. The temperature in noncombustible structure reaches one hundred sixty-five (165) degrees Fahrenheit;
 - b. The carbon monoxide concentration reaches ten (10) parts per million above the ambient level for the area; or
 - c. The optical density of smoke reaches 0.022 per meter.
 3. At least every thirty (30) days, sensors installed to monitor for carbon monoxide shall be calibrated with a known concentration of carbon monoxide and air sufficient to activate the closing door, or each smoke sensor shall be tested to determine that it functions correctly.
 4. When a fire suppression system is used, the installation shall be:
 - a. Ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places; or
 - b. Ventilated with intake air that is monitored for carbon monoxide or smoke by an atmospheric monitoring system installed and operated in a suitable manner.
 5. All monitoring systems used to monitor intake air ventilating battery charging stations under subparagraphs 1. and 4. of this paragraph shall be done with sensors not affected by hydrogen.
 6. This paragraph shall not apply to:
 - a. Rectifiers and power centers with transformers that either are dry-type or contain nonflammable liquid, if they are located at or near the section and are moved as the working section advances or retreats;
 - b. Submersible pumps;
 - c. Permissible pumps, and associated permissible switchgear;
 - d. Pumps located on or near the section that are moved as the working section advances or retreats; or
 - e. Small portable pumps. Underground stations containing transformers or circuit breakers filled with flammable oil shall be provided with door sills or their equivalent, which will confine the oil if leakage or rupture occurs, and shall be of fireproof construction. Underground transformers purchased after June 16, 1972, shall be air cooled or cooled with nonflammable liquid or inert gas. Portable power centers, portable transformers, and distribution centers which are essentially fireproof are not required to be placed on separate splits of air but shall be stationed in well ventilated places outby the last open crosscuts;

- (l) Electrically powered locomotives shall be provided with suitable electrical protective devices;
 - (m) Suitable firefighting equipment shall be located at strategic points along the belt conveyor, and proper fire extinguishers shall be provided at the transfer points. The commissioner may prescribe any other safety measures for the prevention and combating of mine fires as they pertain to conveyor belts. Only approved flame resistant belting shall be taken into and used inside any mine, and all underground belt conveyors shall be provided with slippage and sequence switches and with start and stop controls at intervals not to exceed one thousand (1000) feet. The controls shall be properly installed and positioned so as to be readily accessible;
 - (n) Communication wires and cables shall be adequately insulated and protected by proper installation or guarding;
 - (o) Telephone wires shall be provided with lightening arresters where the wires enter the mine and at the buildings on the surface;
 - (p) Insulating mats shall be placed in front of disconnecting devices and all electrical installations where required;
 - (q) Ground wires in trailing cables shall be tested weekly for open circuit and high resistance;
 - (r) Power circuits in tipples, buildings, cleaning plants, etc., and all underground electrical circuits shall be deenergized when not in use over a long period;
 - (s) All underground power circuits and electrical equipment shall be de-energized before work is done on the circuits and equipment except when necessary for troubleshooting or testing. When electrical work or major mechanical work is performed, a suitable disconnect providing visible evidence that the power is disconnected shall be locked open and a tag shall be posted by the individuals performing the work. Locks and tags shall be removed only by the persons who installed them, or if those persons are unavailable, by a person authorized by the operator. Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustment;
 - (t) Where electric circuits cross over or pass under belt conveyors the wiring shall be suitably protected; and
 - (u) Switch boxes, contactors, controllers, and all other similar devices shall be kept free of significant accumulations of combustible dust.
- (2) The following shall apply to trolley wires and trolley feeder wires:
- (a) On all haulage roads, landings, and partings where persons are required to regularly work or pass under bare power wires placed less than six and one-half (6-1/2) feet above the top of the rail, suitable protection shall be provided. This protection shall consist of channeling the roof, placing boards along the wires and extending below them, or the use of some other approved device that affords protection;
 - (b) All machine feed conductors shall be placed on suitable insulators which shall be so placed as to prevent the conductors coming in contact with combustible or conductive materials;
 - (c) When the machine or feed wires are carried in the same entry as the trolley wire, they shall be placed on the same side as the trolley wire, between the trolley wire and rib, and shall be protected from contact therewith. Positive feed wires crossing places where persons are required to travel shall be safely guarded or protected against persons coming in contact therewith, as required by paragraph (a) of this subsection;
 - (d) All trolley and positive feed wires shall be placed on opposite sides of track from refuge holes or necks of rooms when so ordered by the department, but wires, when protected as required by paragraph (a) of this subsection, may be placed across the necks of rooms. Switches or circuit breakers shall be provided to control the current at the mine and all important sections in the mine;
 - (e) Where track is used for the return circuit, at least one (1) side shall be bonded to the full length of the trolley wire installation. Cross-bonds shall be installed not to exceed two hundred (200) foot intervals along the track; and
 - (f) All mine locomotives shall be fused or otherwise protected at the switch or at the nip.

- (3) The following shall apply to surface installations:
- (a) High-voltage lines shall be at least twenty (20) feet above the ground where there is a possibility of contact by traffic passing underneath;
 - (b) Electrical circuits, wires, and cables shall be supported on insulators except when cables, which are of a design that can be safely used without insulators, are used;
 - (c) Lightning arresters shall be installed on all ungrounded, exposed power conductors and telephone wires entering a mine, regardless of voltage. Overload protection and disconnect switches of suitable sizes and ratings approved by the department shall also be provided, except that they shall not be required of telephone wires;
 - (d) Every metallic building in which electricity is used or connected with any circuit shall be effectively grounded;
 - (e) All transformer tanks shall be effectively grounded;
 - (f) Switch boxes, contactors, controllers, and all other similar devices shall be kept free of significant accumulations of combustible dust that create a fire hazard;
 - (g) Surface transformer stations shall be housed or fenced in when lower than fifteen (15) feet above the earth, and the fences shall be a minimum of six (6) feet in height; and
 - (h) All surface power circuits and electrical equipment shall be de-energized before work is done on the circuits and equipment except when necessary for troubleshooting or testing. When electrical work or major mechanical work is performed, a suitable disconnect providing visible evidence that the power is disconnected shall be locked open and a tag shall be posted by the individuals performing the work. Locks and tags shall be removed only by persons who installed them or, if those persons are unavailable, by a person authorized by the operator. Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments. When disconnects for stationary low and medium voltage equipment that do not provide visual evidence that the power is disconnected are used, an adequately rated voltage detector shall be used to test each phase conductor or circuit part to verify they are de-energized before any work is performed. When practical, confirmation that the voltage detector is operating satisfactorily shall be made before each test.
- (4) (a) Notwithstanding any provisions of subsections (1), (2), or (3) of this section, the department may authorize the construction, maintenance, operation, or conducting of any activity regulated by this section, to be constructed, maintained, operated, or conducted in a different manner than specified in any provision of subsections (1), (2), or (3) of this section, when scientific or engineering information is made available to the department substantially indicating that the different manner would afford equal or greater protection and safety than the manner required in subsections (1), (2), or (3) of this section; and
- (b) The department may prescribe administrative regulations with respect to the aboveground or underground installations in connection with any mine operation when information is made available indicating that regulation is reasonably necessary to prevent injury to, or loss of, life and property.
- (5) ***All electrical work shall be performed by a certified electrician at all underground mines and surface mines operating draglines or highwall miners.***

Section 23. The secretary of the Environmental and Public Protection Cabinet shall employ not more than 15 mine analysts paid from existing cabinet funds, if available. If funds are not available, then the secretary shall employ new mine analysts as funds become available.

Section 24. The commissioner for natural resources is hereby directed to study the efficacy of utilizing risk-based assessment of underground and surface coal mines for determining the frequency of mine inspections.

Section 25. Sections 4 and 9 of this Act take effect January 1, 2009.

Section 26. Section 18 of this Act takes effect January 1, 2008.

Approved March 23, 2007.

CHAPTER 95

(HB 549)

AN ACT relating to incentives for development and redevelopment and declaring an emergency.

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

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

- (1) *The General Assembly finds and declares that the establishment of development areas, local development areas, and projects which result in increased property values, increased employment opportunities, and increased economic activity in communities within the Commonwealth serves a public purpose.*
- (2) *The General Assembly further finds and declares that the authority prescribed in Sections 1 to 22 of this Act, and the purposes to be accomplished thereunder, are proper.*
- (3) *A city or county creating or expanding a development area or local development area, shall, to the greatest extent it determines to be reasonably feasible in carrying out the provisions of Sections 1 to 22 of this Act, afford maximum opportunity for the rehabilitation, development, renovation, or improvement of a development area or local development area by private enterprise.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

The purposes of Sections 1 to 22 of this Act are as follows:

- (1) *Section 4 of this Act provides authority for cities and counties to establish local development areas for the development of previously undeveloped land within their jurisdictional boundaries and devote local resources to support the development of projects in those local development areas. Local development areas established under Section 4 of this Act and projects within local development areas shall not be eligible for participation by the Commonwealth.*
- (2) *Sections 5, 6, and 7 of this Act provide a framework for cities and counties to establish development areas within their jurisdictional boundaries, and to devote local resources to providing redevelopment assistance and supporting projects in those development areas. Projects within development areas established pursuant to Sections 5, 6, and 7 of this Act shall be eligible for participation by the Commonwealth if such projects meet the requirements for Commonwealth participation established by Sections 1 to 22 of this Act; and*
- (3) *Sections 16, 17, 18, 19, 20, and 21 of this Act establish the requirements that must be met by a project within a development area for the project to receive participation from the Commonwealth.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 22 of this Act:

- (1) *"Activation date" means the date established any time within a two (2) year period after the commencement date. The activation date is the date on which the time period for the pledge of incremental revenues shall commence. The Commonwealth or governing body may extend the two (2) year period to no more than four (4) years upon written application by the agency requesting the extension. To implement the activation date, the agency that is a party to the project grant agreement shall notify the office. The agency that is a party to the local participation agreement or the local development area agreement shall notify the governing body that created the development area or local development area;*
- (2) *"Agency" means:*
 - (a) *An urban renewal and community development agency established under KRS Chapter 99;*
 - (b) *A development authority established under KRS Chapter 99;*
 - (c) *A nonprofit corporation;*
 - (d) *A housing authority established under KRS Chapter 80;*
 - (e) *An air board established under KRS 183.132 to 183.160;*
 - (f) *A local industrial development authority established under KRS 154.50-301 to 154.50-346;*
 - (g) *A riverport authority established under KRS 65.510 to 65.650; or*

- (h) *A designated department, division, or office of a city or county;*
- (3) *"Approved public infrastructure costs" means costs associated with the acquisition, installation, construction, or reconstruction of public works, public improvements, and public buildings, including planning and design costs associated with the development of such public amenities. Approved public infrastructure costs includes but is not limited to costs incurred for the following:*
- (a) *Land preparation, including demolition and clearance work;*
 - (b) *Buildings;*
 - (c) *Sewers and storm drainage;*
 - (d) *Curbs, sidewalks, promenades, and pedways;*
 - (e) *Roads;*
 - (f) *Street lighting;*
 - (g) *The provision of utilities;*
 - (h) *Environmental remediation;*
 - (i) *Floodwalls and flood gates;*
 - (j) *Public spaces or parks;*
 - (k) *Parking;*
 - (l) *Easements and rights of way;*
 - (m) *Transportation facilities;*
 - (n) *Public landings;*
 - (o) *Amenities, such as fountains, benches, and sculptures; and*
 - (p) *River bank modifications and improvements;*
- (4) *"Approved signature project costs" means:*
- (a) *The acquisition of land for portions of the project that are for infrastructure; and*
 - (b) *Costs associated with the acquisition, installation, development, construction, improvement, or reconstruction of infrastructure, including planning and design costs associated with the development of infrastructure, including but not limited to parking structures, including portions of parking structures that serve as platforms to support development above;*
- that have been determined by the commission to represent a unique challenge in the financing of a project such that the project could not be developed without incentives intended by this chapter to foster economic development;*
- (5) *"Brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant;*
- (6) *"Capital investment" means:*
- (a) *Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of a project;*
 - (b) *The cost of acquiring land or rights in land within the development area on the footprint of the project, and any cost incident 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 a project which is not paid by the contractor or contractors or otherwise provided;*
 - (d) *All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the*

- duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of a project;*
- (e) *All costs that are required to be paid under the terms of any contract or contracts for the acquisition, construction, installation, equipping, and rehabilitation of a project; and*
 - (f) *All other costs of a nature comparable to those described in this subsection;*
- (7) *"City" means any city, consolidated local government, or urban-county government;*
 - (8) *"Commencement date" means:*
 - (a) *The date on which a local development area agreement is executed; or*
 - (b) *The date on which a local participation agreement is executed; or*
 - (c) *The date on which a project grant agreement is executed;*
 - (9) *"Commission" means the State Tax Increment Financing Commission established by Section 15 of this Act;*
 - (10) *"Commonwealth" means the Commonwealth of Kentucky;*
 - (11) *"County" means any county, consolidated local government, charter county, unified local government, or urban-county government;*
 - (12) *"CPI" means the nonseasonally adjusted Consumer Price Index for all urban consumers, all items, base year computed for 1982 to 1984 equals one hundred (100), published by the United States Department of Labor, Bureau of Labor Statistics;*
 - (13) *"Debt charges" means the principal, including any mandatory sinking fund deposits, interest, and any redemption premium, payable on increment bonds as the payments come due and are payable and any charges related to the payment of the foregoing;*
 - (14) *"Development area" means an area established under Sections 5, 6, and 7 of this Act;*
 - (15) *"Economic development projects" means projects which are approved for tax credits under Subchapter 20, 22, 23, 24, 26, 28, 34, or 48 of KRS Chapter 154;*
 - (16) *"Establishment date" means the date on which a development area or a local development area is created. If the development area, development area plan, or local development area is modified or amended subsequent to the original establishment date, the modifications or amendments shall not extend the existence of the development area or local development area beyond what would be permitted under Sections 1 to 22 of this Act from the original establishment date;*
 - (17) *"Financing costs" means principal, interest, costs of issuance, debt service reserve requirements, underwriting discount, costs of credit enhancement or liquidity instruments, and other costs directly related to the issuance of bonds or debt for approved public infrastructure costs or approved signature project costs for projects approved pursuant to Section 18 of this Act;*
 - (18) *"Footprint" means the actual perimeter of a discrete, identified project within a development area. The footprint shall not include any portion of a development area outside the area for which actual capital investments are made;*
 - (19) *"Governing body" means the body possessing legislative authority in a city or county;*
 - (20) *"Increment bonds" means bonds and notes issued for the purpose of paying the costs of one (1) or more projects, or grant or loan programs as described in paragraph (c) of subsection (35) of this section, in a development area or a local development area;*
 - (21) *"Incremental revenues" means:*
 - (a) *The amount of revenues received by a taxing district, as determined by subtracting old revenues from new revenues in a calendar year with respect to a development area, a project within a development area, or a local development area; or*
 - (b) *The amount of revenues received by the Commonwealth as determined by subtracting old revenues from new revenues in a calendar year with respect to the footprint of a project within a development area;*

- (22) *"Issuer" means a city, county, or agency issuing increment bonds;*
- (23) *"Local development area" means a development area established under Section 4 of this Act;*
- (24) *"Local development area agreement" means an agreement entered into under Section 4 of this Act;*
- (25) *"Local participation agreement" means the agreement entered into under Section 12 of this Act;*
- (26) *"Local tax revenues" means:*
 - (a) *Revenues derived by a city or county from one (1) or more of the following sources:*
 - 1. *Real property ad valorem taxes; and*
 - 2. *Occupational taxes, excluding occupational taxes that have already been pledged to support an economic development project within the development area; and*
 - (b) *Revenues derived by any taxing district other than school districts or fire districts from real property ad valorem taxes;*
- (27) *"Low-income household" means a household in which gross income is no more than two hundred percent (200%) of the poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. sec. 9902(2);*
- (28) *"New revenues" means:*
 - (a) *The amount of local tax revenues received by a taxing district with respect to a development area or a local development area in any calendar year beginning with the year in which the activation date occurred; or*
 - (b) *The amount of state tax revenues received by the Commonwealth with respect to the footprint of a project in any calendar year beginning with the year in which the activation date occurred;*
- (29) *"Office" means the Division of Tax Increment Financing within the Office of the Commissioner in the Department of Revenue, established by Section 26 of this Act;*
- (30) *"Old revenues" means:*
 - (a) *The amount of local tax revenues received by a taxing district with respect to a development area or a local development area during the last calendar year prior to the commencement date; or*
 - (b)
 - 1. *The amount of state tax revenues received by the Commonwealth from the footprint of a project during the last calendar year prior to the commencement date. If the office determines that the amount of state tax revenues received during the last calendar year prior to the commencement date does not represent a true and accurate depiction of revenues, the office may consider revenues for a period of no longer than three (3) calendar years prior to the commencement date, so as to determine a fair representation of state tax revenues. The amount determined by the office shall be specified in the project grant agreement. If state tax revenues were derived from the footprint of project prior to the commencement date, old revenues shall increase each calendar year by:*
 - a. *The percentage increase, if any, of the CPI or a comparable index; or*
 - b. *An alternative percentage increase that is determined to be appropriate by the office.**The method for increasing old revenues shall be set forth in the project grant agreement;*
 - 2. *If state revenues were derived from the footprint of the project prior to the commencement date, the calculation of incremental revenues shall be based on the value of old revenues as increased using the method prescribed in subparagraph 1. of this paragraph to reflect the same calendar year as is used in the determination of new revenues.*
- (31) *"Outstanding" means increment bonds that have been issued, delivered, and paid for by the purchaser, except any of the following:*
 - (a) *Increment bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;*

- (b) *Increment bonds in replacement of which or in exchange for which other increment bonds have been issued; or*
 - (c) *Increment bonds for the payment, redemption, or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the ordinance or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of increment bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent;*
- (32) *"Planning unit" means a planning commission established pursuant to KRS Chapter 100;*
- (33) *"Project" means any property, asset, or improvement located in a development area or a local development area and certified by the governing body as:*
- (a) *Being for a public purpose; and*
 - (b) *Being for the development of facilities for residential, commercial, industrial, public, recreational, or other uses, or for open space, including the development, rehabilitation, renovation, installation, improvement, enlargement, or extension of real estate and buildings; and*
 - (c) *Contributing to economic development or tourism; and*
 - (d) *Meeting the additional requirements established by Section 17, 18, or 19 of this Act if incremental revenues from the Commonwealth are to be included;*
- (34) *"Project grant agreement" means an agreement entered into under Section 20 of this Act;*
- (35) *"Redevelopment assistance," as utilized within a development area, includes the following:*
- (a) *Technical assistance programs to provide information and guidance to existing, new, and potential businesses and residences;*
 - (b) *Programs to market and promote the development area and attract new businesses and residents;*
 - (c) *Grant and loan programs to encourage the rehabilitation of residential, commercial, and industrial buildings; improve the appearance of building facades and signage; and stimulate business start-ups and expansions;*
 - (d) *Programs to obtain a reduced interest rate, down payment, or other improved terms for loans made by private, for-profit, or nonprofit lenders to encourage the rehabilitation of residential, commercial, and industrial buildings; improve the appearance of building facades and signage; and stimulate business start-ups and expansions;*
 - (e) *Local capital improvements, including but not limited to the installation, construction, or reconstruction of streets, lighting, pedestrian amenities, public utilities, public transportation facilities, public parking, parks, playgrounds, recreational facilities, and public buildings and facilities;*
 - (f) *Improved or increased provision of public services, including but not limited to police or security patrols, solid waste management, and street cleaning;*
 - (g) *Provision of technical, financial, or other assistance in connection with:*
 - 1. *Applications to the Environmental and Public Protection Cabinet for a brownfields assessment or a No Further Remediation Letter issued pursuant to KRS 224.01-450; or*
 - 2. *Site remediation by means of the Voluntary Environmental Remediation Program to remove environmental contamination in the development area, or lots or parcels within it, pursuant to KRS 224.01-510 to 224.01-532; and*
 - (h) *Direct development by a city, county, or agency of real property acquired by the city, county, or agency. Direct development may include one (1) or more of the following:*
 - 1. *Assembly and replatting of lots or parcels;*
 - 2. *Rehabilitation of existing structures and improvements;*

3. *Demolition of structures and improvements and construction of new structures and improvements;*
 4. *Programs of temporary or permanent relocation assistance for businesses and residents;*
 5. *The sale, lease, donation, or other permanent or temporary transfer of real property to public agencies, persons, and entities both for profit and nonprofit; and*
 6. *The acquisition and construction of projects;*
- (36) *"Service payment agreement" means an agreement between a city, county, or issuer of increment bonds or other obligations and any person, whereby the person agrees to guarantee the receipt of incremental revenues, or the payment of debt charges, or any portion thereof, on increment bonds or other obligations issued by the city, county, or issuer;*
- (37) *"Signature project" means a project approved under Section 18 of this Act;*
- (38) *"Special fund" means a special fund created under Section 11 of this Act in which all incremental revenues shall be deposited;*
- (39) *"State real property ad valorem tax" means real property ad valorem taxes levied under KRS 132.020(1)(a);*
- (40) *"State tax revenues" means revenues received by the Commonwealth from one (1) or more of the following sources:*
- (a) *State real property ad valorem taxes;*
 - (b) *Individual income taxes levied under KRS 141.020, other than individual income taxes that have already been pledged to support an economic development project within the development area;*
 - (c) *Corporation income taxes levied under KRS 141.040, other than corporation income taxes that have already been pledged to support an economic development project within the development area;*
 - (d) *Limited liability entity taxes levied under KRS 141.0401, other than limited liability entity taxes that have already been pledged to support an economic development project within the development area; and*
 - (e) *Sales taxes levied under KRS 139.200, excluding sales taxes already pledged for:*
 1. *Approved tourism attraction projects, as defined in KRS 148.851, within the development area; and*
 2. *Projects which are approved for sales tax refunds under Subchapter 20 of KRS Chapter 154 within the development area;*
- (41) *"Taxing district" means any city, county, or special taxing district other than school districts and fire districts; and*
- (42) *"Termination date" means:*
- (a) *For a development area, a date established by the ordinance creating the development area that is no more than twenty (20) years from the establishment date, provided that if a project grant agreement for a project within a development area or a local participation agreement relating to the development area has a termination date that is later than the termination date established in the ordinance, the termination date for the development area shall be extended to the termination date of the project grant agreement, or local participation agreement. However, the termination date for the development area shall in no event be more than forty (40) years from the establishment date;*
 - (b) *For a local development area, a date established by the ordinance creating the local development area that is no more than twenty (20) years from the establishment date, provided that if a local development area agreement relating to the local development area has a termination date that is later than the termination date established in the ordinance, the termination date for the local development area shall be extended to the termination date of the local development area agreement;*
 - (c) *For a local participation agreement, a date that is no more than twenty (20) years from the activation date. However, the termination date for a local participation agreement shall in no event be more*

than forty (40) years from the establishment date of the development area to which the local participation agreement relates;

- (d) For a local development area agreement, a date that is no more than twenty (20) years from the activation date. However, the termination date for a local development area agreement shall in no event be more than forty (40) years from the establishment date of the local development area to which the development area agreement relates;*
- (e) For a project grant agreement satisfying the requirements of Section 17 of this Act or Section 19 of this Act, a date established by the project grant agreement that is no more than twenty (20) years from the activation date. However, the termination date for a project grant agreement shall in no event be more than forty (40) years from the establishment date of the development area to which the project grant agreement relates; and*
- (f) For a project grant agreement satisfying the requirements of Section 18 of this Act, a date established by the project grant agreement that is no more than thirty (30) years from the activation date. However, the termination date for a project grant agreement shall in no event be more than forty (40) years from the establishment date of the development area to which the project grant agreement relates.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) Any city or county may establish a local development area pursuant to this section, subject to the following conditions:*
 - (a) A local development area shall be a previously undeveloped tract of land;*
 - (b) No more than one thousand (1,000) acres shall be approved for a local development area in any twelve (12) month period in any county;*
 - (c) The establishment or expansion of the local development area shall not cause the assessed value of taxable real property within all local development areas and development areas of the city or county establishing the local development area to exceed twenty percent (20%) of the assessed value of all taxable real property within its jurisdiction. For the purpose of determining whether the twenty percent (20%) threshold has been met, the assessed value of taxable real property within all of the local development areas and development areas shall be valued as of the establishment date; and*
 - (d) Unless the ordinance establishing a local development area requires an earlier termination date, a local development area shall cease to exist on the termination date.*
- (2) A city or county shall take the following steps to establish or modify a local development area:*
 - (a) The city or county shall hold a public hearing to solicit input from the public regarding the local development area. The city or county shall advertise the hearing by causing to be published, in accordance with KRS 424.130, notice of the time, place, and purpose of the hearing and a general description of the boundaries of the proposed local development area. The notice shall include a summary of the projects proposed for the local development area;*
 - (b) After the public hearing, the city or county shall adopt an ordinance which shall include the following provisions:*
 - 1. A description of the boundaries of the local development area;*
 - 2. The establishment date and the termination date;*
 - 3. A name for the local development area for identification purposes;*
 - 4. Approval of any agreements relating to the local development area;*
 - 5. A provision establishing a special fund for the local development area or any project within the local development area;*
 - 6. A requirement that any entity other than the governing body that receives financial assistance under the local development area ordinance, whether in the form of a grant, loan, or loan guarantee, shall make periodic accounting to the governing body;*
 - 7. A provision for periodic analysis and review by the governing body of the development activity in the local development area;*

8. *Designation of the agency or agencies responsible for oversight, administration, and implementation of the local development ordinance; and*
9. *Any other provisions, findings, limitations, rules, or procedures regarding the proposed local development area or a project within the local development area and its establishment or maintenance deemed necessary by the city or county; and*
- (c) *If incremental revenues or other resources are to be pledged from taxing districts other than the city or county establishing the local development area, a local development area agreement shall be executed in accordance with the provisions of subsection (4) of this section.*
- (3) *Funding for projects in a local development area shall be provided in accordance with Section 9 of this Act.*
- (4) *A local development area agreement shall be executed among the agencies and taxing districts involved in administering, providing financing, or pledging incremental revenues within the local development area. The local development area agreement shall be adopted by a city or county by ordinance and by any other taxing district or agency by resolution, and shall include but not be limited to the following provisions:*
 - (a) *Identification of the parties to the local development area agreement and the duties and responsibilities of each entity under the agreement;*
 - (b) *Specific identification of the tax increments released or pledged by type of tax by each taxing district;*
 - (c) *The anticipated benefit to be received by each taxing district for the release or pledge, including:*
 1. *A detailed summary of old revenues collected and projected new revenues for each taxing district on an annual basis for the term of the local development area agreement; and*
 2. *The maximum amount of incremental revenue to be paid by each taxing district and the maximum number of years the payment will be effective;*
 - (d) *A detailed description of the local development area;*
 - (e) *A description of each proposed project, including an estimate of the costs of construction, acquisition, and development;*
 - (f) *A requirement that pledged incremental revenues will be deposited in a special fund pursuant to Section 11 of this Act, including the timing and procedure for depositing incremental revenues and other pledged amounts into the special fund;*
 - (g) *Terms of default and remedies, provided that no remedy shall permit the withholding by any party to the local development area agreement of any incremental revenues pledged to the special fund if increment bonds are outstanding that are secured by a pledge of those incremental revenues;*
 - (h) *The commencement date, activation date, and termination date; and*
 - (i) *Any other provisions not inconsistent with Sections 1 to 22 of this Act deemed necessary or appropriate by the parties to the agreement.*
- (5) *Any pledge of incremental revenues in a local development area agreement shall be superior to any other pledge of revenues for any other purpose and shall, from the activation date to the termination date set forth in the local area development agreement, supersede any statute, ordinance, or resolution regarding the application or use of incremental revenues. No ordinance in conflict with a local development area agreement shall be adopted while any increment bonds secured by that pledge remain outstanding. Ordinances or resolutions pledging incremental revenues on a subordinate basis to any existing pledges may be adopted.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Any city or county may establish a development area pursuant to Sections 5, 6, and 7 of this Act to encourage reinvestment in and development and reuse of areas of the city or county under the following conditions:

- (1) *The area shall be contiguous and shall be no more than three (3) square miles;*
- (2) *The establishment or expansion of the development area shall not cause the assessed value of taxable real property within all development areas and local development areas of the city or county establishing the development area to exceed twenty percent (20%) of the assessed value of all taxable real property within its*

jurisdiction. For the purpose of determining whether the twenty percent (20%) threshold has been met, the assessed value of taxable real property within all of the development areas and local development areas shall be valued as of the establishment date;

- (3) *The governing body of the city or county shall determine that the development area has two (2) or more of the following conditions:*
 - (a) *Substantial loss of residential, commercial, or industrial activity or use;*
 - (b) *Forty percent (40%) or more of the households are low-income households;*
 - (c) *More than fifty percent (50%) of residential, commercial, or industrial structures are deteriorating or deteriorated;*
 - (d) *Substantial abandonment of residential, commercial, or industrial structures;*
 - (e) *Substantial presence of environmentally contaminated land;*
 - (f) *Inadequate public improvements or substantial deterioration in public infrastructure; or*
 - (g) *Any combination of factors that substantially impairs or arrests the growth and economic development of the city or county; impedes the provision of adequate housing; impedes the development of commercial or industrial property; or adversely affects public health, safety, or general welfare due to the development area's present condition and use; and*
- (4) *The governing body of the city or county shall find that all of the following are true:*
 - (a) *That the development area is not reasonably expected to be developed without public assistance. This finding shall be supported by specific reasons and supporting facts, including a clear demonstration of the financial need for public assistance; and*
 - (b) *That the public benefits of the development area justify the public costs proposed. This finding shall be supported by specific data and figures demonstrating that the projected benefits outweigh the anticipated costs and shall take into account the positive and negative effects of investment in the development on existing businesses and residents within the community as a whole; and*
 - (c)
 1. *That the area immediately surrounding the development area has not been subject to growth and development through investment by private enterprise; or*
 2. *If the area immediately surrounding the development area has been subject to growth and development through investment by private enterprise, the identification of special circumstances within the development area that would prevent its development without public assistance.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Any city or county seeking to establish a development area shall adopt a development plan. The development plan may be developed by a city, a county, or a city and county jointly, or may be proposed by an agency or by a private entity. The plan shall include the following:*
 - (a) *Assurances that the proposed development area meets the requirements of subsections (1) and (2) of Section 5 of this Act, identification of the conditions in the proposed development area that meet the criteria set forth in subsection (3) of Section 5 of this Act, and confirmation that the requirements of subsection (4) of Section 5 of this Act have been met;*
 - (b) *A detailed description of the existing uses and conditions of real property in the development area;*
 - (c) *A map showing the boundaries of the proposed development area;*
 - (d) *A map showing proposed improvements and uses therein, including the identification of any proposed projects, along with a narrative description of the proposed improvements, projects, and uses within the development area;*
 - (e) *A description of the redevelopment assistance proposed to be employed in the development area, including the manner and location of such assistance;*
 - (f) *A detailed financial plan containing projections of the cost of the proposed redevelopment assistance to be provided, proposed projects to be funded, proposed sources of funding for these costs, projected*

incremental revenues, and the projected time frame during which financial obligations will be incurred;

- (g) *Proposed changes of any zoning ordinance, comprehensive plan, master plan, map, building code, or ordinance anticipated to be required to implement the development plan; and*
 - (h) *If the city or county is a member of a planning unit, certification of review by the planning commission for compliance with the comprehensive plan of the planning unit pursuant to KRS Chapter 100 after any necessary changes identified in paragraph (g) of this subsection are made.*
- (2) *Prior to adoption of a development plan, the city or county shall hold a public hearing to solicit input from the public regarding the plan. The city or county shall advertise the hearing by causing to be published, in accordance with KRS 424.130, notice of the time, place, and purpose of the hearing and a general description of the boundaries of the proposed development area. The notice shall include a summary of the redevelopment assistance proposed to be employed, identification of projects proposed for the development area, and a statement that a copy of the development plan is available for inspection at the business office of the city or county.*
 - (3) *Prior to publication of a hearing notice pursuant to subsection (2) of this section, a copy of the development plan shall be filed with the city clerk of each city having jurisdiction within the proposed development area, and with the county fiscal court.*
 - (4) *A city or county having jurisdiction within the proposed development area not initially participating in a proposed development plan shall have the opportunity to determine whether it will participate in the plan. The city or county shall determine and notify the entity proposing the development plan in writing within thirty (30) days after the public hearing whether it will participate in the plan.*
 - (5) *At the end of the time period established in subsection (4) of this section, the city or county may adopt an ordinance establishing a development area in accordance with Section 7 of this Act.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *An ordinance establishing a development area shall include the following provisions:*
 - (a) *A description of the boundaries of the development area;*
 - (b) *The establishment date;*
 - (c) *The termination date, including a provision that allows the termination date to be extended as provided in subsection (42) of Section 3 of this Act;*
 - (d) *A name for the development area for identification purposes;*
 - (e) *A finding that the conditions in the development area meet the criteria described in Section 5 of this Act;*
 - (f) *A finding supporting the need to employ redevelopment assistance in the development area;*
 - (g) *A provision adopting the development plan required by subsection (1) of Section 6 of this Act;*
 - (h) *Approval of any agreements relating to the development area, including any local participation agreements;*
 - (i) *A provision establishing a special fund for the development area or any project within the development area;*
 - (j) *A requirement that any entity other than the governing body that receives financial assistance under the development area ordinance, whether in the form of a grant, loan, or loan guarantee, shall make periodic accounting to the governing body;*
 - (k) *A provision for periodic analysis and review by the governing body of the development activity in the development area, a review of the progress in meeting the stated goals of the development area, and a requirement that the review and analysis be forwarded to the office if the development activity includes projects subject to a project grant agreement;*
 - (l) *Designation of the agency or agencies responsible for oversight, administration, and implementation of the development ordinance; and*

- (m) *Any other provisions, findings, limitations, rules, or procedures regarding the proposed development area or a project within the development area and its establishment or maintenance deemed necessary by the city or county.*
- (2) *An ordinance establishing a development area may designate an existing agency to oversee and administer implementation of a development area ordinance or a portion thereof.*
- (3) *Unless the ordinance establishing a development area requires an earlier date, a development area shall cease to exist on the termination date.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Any amendment, change, or revision to a development plan adopted as part of a development area established pursuant to Sections 5, 6, and 7 of this Act, including the addition of a project, use of new or different redevelopment assistance within the development area, or amendment of the development area boundaries shall be made as follows, provided that any amendment adopted shall not extend the existence of development area beyond the termination date:

- (1) *An amendment to the development plan shall be adopted by the city or county. The proposed development plan amendment shall include the following:*
 - (a) *Identification of the development area to which the amendment applies;*
 - (b) *A copy of the development plan as revised by the amendment;*
 - (c) *A narrative description of the proposed changes to the original development area plan and how those changes will impact the original development plan;*
 - (d) *If the amendment changes the boundaries, or in any way amends maps filed with the original development plan, a revised map identifying the new boundaries, improvements, or projects proposed in the amendment;*
 - (e) *A description of the redevelopment assistance proposed to be employed, including the manner and location of such assistance relating to the proposed amendment;*
 - (f) *A financial plan relating to the proposed amendment, including the proposed cost of providing any redevelopment assistance and proposed projects to be funded, the sources of funding to meet those costs, projected incremental revenues, and the projected time period during which financial obligations will be incurred;*
 - (g) *Proposed changes of any zoning ordinance, comprehensive plan, master plan, map, building code, or ordinance required to implement the proposed amendment; and*
 - (h) *If the city or county is a member of a planning unit, certification of review by the planning commission for compliance with the comprehensive plan of the planning unit pursuant to KRS Chapter 100 after any necessary changes identified in paragraph (g) of this subsection are made.*
- (2) *Prior to the adoption of an amendment to a development plan, the city or county shall comply with the hearing and notice provisions set forth in subsections (2) and (3) of Section 6 of this Act. The notice provided in relation to an amendment to the development plan shall include a summary of how the amendment changes the development plan and shall identify new redevelopment assistance and projects proposed by the amendment.*
- (3) *The city or county shall adopt any amendment to the development plan and any amendment to the development area by ordinance. The ordinance shall include the following provisions:*
 - (a) *A provision adopting the amendment to the development plan required by subsection (1) of this section;*
 - (b) *Approval of any local participation agreements or other agreements relating to the amendment;*
 - (c) *The identification of any new or different state or local tax revenues pledged by any taxing district or the Commonwealth to support the provision of redevelopment assistance or projects identified in the amendment;*
 - (d) *A finding that the amendment does not increase the aggregate value of taxable real property included in all the redevelopment areas and the local development areas within the jurisdiction of the city or county to more than twenty percent (20%) of the total value of taxable real property within its*

jurisdiction. For the purpose of determining whether the twenty percent (20%) threshold has been met, the assessed value of taxable-real property within all of the local development areas and development areas shall be valued as of the establishment date; and

- (e) *Any other provisions, findings, limitations, rules, or procedures regarding the amendment deemed necessary by the city or county.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *To provide funding for redevelopment assistance or projects in a development area or projects in a local development area:*
 - (a) *Any taxing authority may, in addition to any other pledge permitted by law to secure its obligations, pledge up to one hundred percent (100%) of the incremental local tax revenues generated in the development area or local development area from a project within the development area or local development area for up to thirty (30) years from the activation date;*
 - (b) *The amount of incremental revenues shall be determined for each type of tax separately; and*
 - (c) *Local tax revenues from a development area that have not been pledged to support redevelopment assistance or projects within the development area, or from a local development area that have not been pledged to support projects within the local development area, may be used to support other economic development projects, provided that local tax revenues shall not be pledged more than once. Thus, local tax revenues pledged to support increment bonds issued for the development area or local development area shall not also be pledged to support a specific project within the development area or local development area, and those revenues shall not be pledged to support any other program, development, or undertaking.*
- (2) *Any city may pledge revenues collected under a special assessment imposed under KRS 91A.200 to 91A.290 to support projects or the provision of redevelopment assistance within a development area, or to support projects within a local development area, and may pledge revenues collected from the assessment to support increment bonds.*
- (3) *Any county may levy a special assessment under the terms and conditions established for cities under KRS 91A.200 to 91A.290 to support projects or the provision of redevelopment assistance within a development area, or to support projects within a local development area, and may pledge revenues collected from the assessment to support increment bonds.*
- (4) *Any pledge of incremental revenues or other revenues related to a development area by a taxing district shall be accomplished through the execution of a local participation agreement in accordance with Section 12 of this Act.*
- (5) *Any pledge of incremental revenues or other revenues related to a local development area by a taxing district shall be accomplished through the execution of a local development area agreement in accordance with Section 4 of this Act.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Any city, county, or agency with bonding authority may issue increment bonds and may pledge incremental revenues to the payment of the increment bonds.

- (1) *Increment bonds shall be issued, administered, and regulated by ordinance adopted by the governing body which shall:*
 - (a) *Declare the necessity of the incremental bond issue;*
 - (b) *State the principal amount or maximum principal amount of the increment bonds to be issued;*
 - (c) *State the purpose of the increment bond issue;*
 - (d) *State or provide for the date of, and the dates and amounts or maximum amount of, maturities or principal payments on the increment bonds;*
 - (e) *State any provisions for a special fund, mandatory sinking fund, mandatory sinking fund redemption, or for redemption prior to maturity;*

- (f) *Provide for the rate or rates of interest, or maximum rate or rates of interest, or the method for establishing the rate or rates of interest to be paid on the increment bonds;*
 - (g) *State any provision for a designated officer of the issuer to determine any of the specific terms required to be stated or provided for in this subsection, subject to any limitations stated in the proceedings;*
 - (h) *If the increment bonds are payable solely from incremental revenues, include a determination that the incremental revenues are adequate to make the debt charges so long as the increment bonds are outstanding; and*
 - (i) *Include any other provisions deemed appropriate by the governing body.*
- (2) *Increment bonds issued pursuant to this section shall not mature on a date beyond the termination date of the development area or local development area.*
 - (3) *Increment bonds may also be issued to fund or refund all or any portion of outstanding increment bonds. Any increment bonds issued under this section shall mature as determined by the governing body consistent with the termination date.*
 - (4) *The provisions of KRS 66.021, 66.031, 66.041, 66.045, 66.071, 66.091, 66.121, 66.131, 66.141, 66.151, 66.171, 66.181, and 66.191 shall apply to the issuance of increment bonds insofar as they do not conflict with the provisions of Sections 1 to 22 of this Act. If they do conflict, the provisions of Sections 1 to 22 of this Act shall apply.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

During any time when incremental revenues have been pledged pursuant to a local participation agreement, local development area agreement, or project grant agreement, or that increment bonds are outstanding, the city, county, or issuer, as the case may be, shall maintain a special fund, which shall be pledged for the retirement of increment bonds, if such bonds are outstanding, and the payment of costs related to a project in a development area or local development area, or providing redevelopment assistance in a development area.

- (1) *Officials charged with collecting revenues for any taxing district that has pledged incremental revenues under a local participation agreement or a local development area agreement shall, for each year a local participation agreement or local development area agreement is in effect or any increment bonds are outstanding with respect to a development area or local development area, submit those incremental revenues for deposit in the special fund. The amount of incremental revenues shall be determined under Section 22 of this Act.*
- (2) *Funds deposited in a special fund shall be disbursed at the times and in the amounts required to pay the costs of any debt charges on incremental bonds, approved public infrastructure costs, signature project costs and, in a development area, redevelopment assistance. However, there shall be no disbursements for other redevelopment assistance in a development area, or approved public infrastructure costs, or approved signature project costs in a development area or local development area, if the funds are required to pay debt charges on increment bonds.*
- (3) *Amounts in a special fund which exceed the amount required to pay debt charges and, in a development area, costs of redevelopment assistance in any fiscal year shall be used to provide for the retirement or defeasance of all or a portion of the remaining debt charges secured by the incremental revenues. Amounts beyond this may be used to pay the costs of additional projects or, in a development area, redevelopment assistance.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *A local participation agreement shall be executed among the agencies and taxing districts involved in administering or providing financing or pledging incremental revenues to support the implementation of a development plan in a development area. The local participation agreement shall be adopted by a city or county by ordinance and by any other taxing authority or agency by resolution, and shall include but not be limited to the following provisions:*
 - (a) *Identification of the parties to the local participation agreement and the duties and responsibilities of each entity under the agreement;*
 - (b) *Specific identification of the incremental revenues released or pledged by type of tax by each taxing district;*

- (c) *The anticipated benefit to be received by each taxing district for the release or pledge, including:*
 - 1. *A detailed summary of old revenues collected and projected new revenues for each taxing district on an annual basis for the term of the local participation agreement; and*
 - 2. *The maximum amount of incremental revenue to be paid by each taxing district and the maximum number of years the payment will be effective;*
 - (d) *A detailed description of the development area;*
 - (e) *A description of each proposed project that is the subject of a local participation agreement, including an estimate of the costs of construction, acquisition, and development;*
 - (f) *A requirement that pledged incremental revenues will be deposited in a special fund established pursuant to Section 11 of this Act, including the timing and procedure for depositing incremental revenues and other pledged amounts into the special fund;*
 - (g) *Terms of default and remedies, provided that no remedy shall permit the withholding by any party to the local participation agreement of any incremental revenues pledged to the special fund if increment bonds are outstanding that are secured by a pledge of those incremental revenues;*
 - (h) *The commencement date, activation date, and termination date; and*
 - (i) *Any other provisions not inconsistent with Sections 1 to 22 of this Act deemed necessary or appropriate by the parties to the agreement.*
- (2) *Any pledge of incremental revenues in a local participation agreement shall be superior to any other pledge of revenues for any other purpose and shall, from the activation date to the termination date set forth in the local participation agreement, supersede any statute, ordinance, or resolution regarding the application or use of incremental revenues. An ordinance in conflict with a local participation agreement shall not be adopted while any increment bonds secured by that pledge remain outstanding. Ordinances or resolutions pledging incremental revenues on a subordinate basis to any existing pledges may be adopted.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *A city, county, or issuer may enter into a service payment agreement.*
- (2) *The service payment agreement may provide that the city, county, or issuer shall have a lien on property described in the service payment agreement equal to the amount of periodic payments due under the service payment agreement. The service payment agreement may further provide that any lien created pursuant to this section shall be governed by the provisions set forth in KRS 91A.280, provided that a lien created pursuant to this section shall not have the priority established in KRS 91A.280 in relation to an existing lien on the property covered by the agreement unless, prior to recording the service payment agreement, the lien holder under the service payment agreement provides notice of the lien created by the service payment agreement to the holder of the existing lien, and the holder of the existing lien consents to the priority in writing. If written consent is not obtained, the priority of the lien created under this subsection in relation to the prior lien shall be determined in the same manner as a mortgage lien under KRS 382.280.*
- (3) *A lien authorized by this section shall not be valid and enforceable until evidence of the lien has been recorded in the office of the county clerk. The lien shall commence upon the issuance of increment bonds or other obligations and shall continue until other funding sources pledged to and derived from the project that is the subject of the service payment agreement are sufficient to make, when due, all payments on the increment bonds or other obligations identified in the service payment agreement. Upon termination of a lien authorized by this section, a release shall be filed by the city, county, or issuer with the county clerk.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Real property located within a development area shall not be eligible for participation in a program granting property assessment or reassessment moratoriums pursuant to KRS 99.600.

SECTION 15. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The State Tax Increment Financing Commission is hereby created as an independent agency of the state within the meaning of KRS Chapter 12. The commission shall be composed of the following members:*
 - (a) *The secretary of the Finance and Administration Cabinet, who shall be the chairman thereof;*

- (b) *The state budget director;*
 - (c) *The secretary of the Cabinet for Economic Development;*
 - (d) *The secretary of the Commerce Cabinet;*
 - (e) *The chairperson of the Kentucky Economic Development Finance Authority;*
 - (f) *The dean of the University of Kentucky Gatton College of Business and Economics; and*
 - (g) *The dean of the University of Louisville College of Business and Public Administration.*
- (2) *The commission shall review all applications for state participation in tax increment financing projects and shall approve those proposals it determines meet the requirements established by Sections 16, 17, 18, 19, 20 and 21 of this Act.*
 - (3) *Members of the commission shall serve without compensation, but may receive reimbursement for their actual and necessary expenses incurred in the performance of their duties.*
 - (4) *Any four (4) members of the commission shall constitute a quorum and shall by majority vote be authorized to transact any and all business of the commission.*
 - (5) *The commission shall meet at least two (2) times each year, but may meet more frequently upon the call of the chairman or a request made by any four (4) members of the commission.*
 - (6) *The commission shall be attached to the Finance and Administration Cabinet for administrative purposes and staff services. All cabinets, departments, divisions, agencies, and officers of the Commonwealth shall furnish the commission with necessary assistance, resources, information, records, or advice as it may require to fulfill its duties.*
 - (7) *The commission shall prepare bylaws and shall establish procedures applicable to the operations of the commission.*
 - (8) *The commission shall have the authority to promulgate any regulations necessary for the administration of Sections 15, 16, 17, 18, 19, 20, and 21 of this Act in accordance with KRS Chapter 13A.*
 - (9) *On or before February 15, 2008, and each year thereafter, the commission shall provide the Governor and the Legislative Research Commission with an annual report, which shall include, but shall not be limited to the following for the prior calendar year:*
 - (a) *A list of applications considered by the commission during the prior calendar year, including the name of the applicant, a description of the project, the local tax revenues or other revenues pledged, the level of participation requested from the Commonwealth, and whether the application was approved; and*
 - (b) *For each approved application, the report shall include:*
 - 1. *The total commitment made by the Commonwealth, detailed by type of tax and estimated incremental revenues pledged for each tax;*
 - 2. *The length of the commitment; and*
 - 3. *The portion of the development area included in the project.*

SECTION 16. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The Commonwealth shall offer three (3) tax increment financing participation programs. The first program, the criteria and details of which are set forth in Section 17 of this Act, relates to a pledge of state real property ad valorem taxes only. The second program, the criteria and details of which are set forth in Section 18 of this Act, is the Signature Projects Program. The third program, the criteria and details of which are set forth in Section 19 of this Act, relates to the pledge of state tax revenues to support mixed use development in blighted urban areas.*
- (2) (a) *A city or county that has established a development area pursuant to Sections 5, 6, and 7 of this Act, or an agency designated as the entity managing a development area established pursuant to Sections 5, 6, and 7 of this Act, may submit an application to the office requesting that the Commonwealth participate in a project.*

1. *The application shall identify the specific program under which state participation is being requested and shall include the following attachments, in addition to any requirements developed by the office pursuant to paragraph (b) of this subsection:*
 - a. *A copy of the ordinance adopted by the city or county establishing the development area;*
 - b. *A copy of the local participation agreement; and*
 - c. *Data and information supporting the determinations and findings required by Section 5 of this Act.*
2. *The office shall review the application to determine if the applicant has met all of the statutory and regulatory requirements established by Sections 1 to 22 of this Act and shall notify the applicant in writing of its determination. This review shall be preliminary in nature and shall not constitute approval of the request. All applications for participation by the Commonwealth shall be reviewed by the commission for approval.*
3.
 - a. *Applications meeting all statutory and regulatory requirements requesting participation by the Commonwealth pursuant to Section 17 of this Act, along with any supporting materials, shall be referred by the office to the commission for consideration.*
 - b.
 - i. *Applicants meeting all statutory and regulatory requirements requesting participation by the Commonwealth pursuant to paragraph (b) of subsection (2) of Section 18 of this Act or Section 19 of this Act shall be required to submit a report prepared by an independent consultant or financial adviser as described in subsection (6) of this section for the application to be complete. The office shall notify such applicants of the report requirements and shall provide information regarding the contents and requirements for the report at the same time it notifies the applicant of the results of its preliminary review.*
 - ii. *Upon receipt and review of the report, the office shall refer the application and supporting information to the commission for consideration.*
- (b) *Additional standards and requirements for the application process shall be established by the office through the promulgation of administrative regulations in accordance with KRS Chapter 13A.*
- (3)
 - (a) *The commission may request any materials and make any inquiries concerning an application that the commission deems necessary.*
 - (b) *The commission shall, through the promulgation of administrative regulations in accordance with KRS Chapter 13A, establish commercially reasonable limitations on the financing costs that may be recovered under the provisions of Section 18 of this Act.*
- (4) *Upon review of an application and other information available, the commission may pledge all or a portion of the state real property ad valorem tax incremental revenue of the Commonwealth or state tax revenues attributable to the footprint of the project, as limited by Section 17, 18, or 19 of this Act, whichever is applicable.*
 - (a) *If incremental revenues are pledged from less than one hundred percent (100%) of the footprint of the project, a description of the included portion of the development area shall be provided.*
 - (b) *State tax revenues from the development area that have not been pledged to projects within the development area may be used to support other economic development projects or tourism projects approved under KRS 139.536 and 148.851 to 148.860, provided that state tax revenues shall not be pledged more than once during the existence of the development area. Thus, state tax revenues pledged to support increment bonds issued for the development area, or a project in the development area shall not be pledged to support any other development area, project, program, development, or undertaking during the life of the development area. If less than one hundred percent (100%) of incremental revenues are pledged pursuant to the provisions of Sections 1 to 22 of this Act, the remaining incremental revenues shall not be used to support other economic development projects or tourism projects approved under KRS 139.536 and 148.851 to 148.860.*

- (5) *The pledge of incremental state real property ad valorem tax revenues or state tax revenues of the Commonwealth by the commission shall be implemented through the execution of a project grant agreement between the Commonwealth and the agency, city, or county, as the case may be, in accordance with Section 20 of this Act.*
- (6) (a) *The commission shall engage the services of a qualified independent outside consultant or financial adviser to analyze the data related to the project and the development area and prepare the report required by subsection (2) of this section. The report shall include the following:*
1. *The estimated approved public infrastructure costs for the project and, if relevant, approved signature project costs, financing costs, and costs associated with land preparation, demolition, and clearance;*
 2. *The feasibility of the project, taking into account the scope and location of the project;*
 3. *The estimated amount of local tax revenues and state tax revenues, as applicable, that would be generated by the project over the period, which may be up to twenty (20) years or thirty (30) years, as applicable, from the activation date;*
 4. *The estimated amount of local tax revenues and state tax revenues, as applicable, that would be displaced within the Commonwealth, for the purpose of quantifying economic activity which is being shifted over the same period as that set forth in subparagraph 3. of this paragraph. The projections for displaced activity shall include economic activity that is lost to the Commonwealth as a result of the project, as well as economic activity that is diverted to the project that formerly took place at existing establishments within the Commonwealth prior to the commencement date of the project;*
 5. *The estimated amount of local and state old revenues that would have been generated in the footprint of the project in the absence of the project, computed over the same time period as set forth in subparagraph 3. of this paragraph;*
 6. *In the process of estimating the revenues and impacts prescribed in subparagraphs 3. and 4. of this paragraph, the independent outside consultant shall not consider any of the following:*
 - a. *Revenues or economic impacts associated with any projects within the development area where the new project will be located; and*
 - b. *Revenues or economic impacts associated with economic development projects and approved Kentucky Tourism Development Act projects under KRS Chapter 148;*
 7. *The relationship of the estimated incremental revenues to the financing needs, including any increment bonds, of the project;*
 8. *When estimating the fiscal impact of the project, the consultant shall evaluate the amount of revenue estimated in subparagraph 3. of this paragraph and shall deduct the amounts estimated in subparagraphs 4. and 5. of this paragraph. The resulting difference shall be compared to the estimated incremental revenues to determine the presence or absence of a positive fiscal impact; and*
 9. *A determination that the project will not occur if not for the designation of the development area, the granting of incremental revenues by the taxing district or districts, other than the Commonwealth, and the granting of the state tax incremental revenues.*
- (b) 1. *The independent consultant or financial advisor shall consult with the Office of State Budget Director, and the Finance and Administration Cabinet in the development of the report.*
2. *The Office of State Budget Director and the office, in collaboration with the independent consultant or financial advisor, shall agree on a methodology to be used and assumptions to be made by the independent consultant or financial consultant in preparing its report.*
3. *On the basis of the independent consultant's report and the other materials provided, prior to any approval of a project by the commission, the Office of State Budget Director and the Finance and Administration Cabinet shall certify to the commission whether there is a projected net positive economic impact to the Commonwealth and the expected amount of state tax incremental revenues from the project.*

4. *The city, county, or agency making the application shall pay all costs associated with the independent consultant's or financial advisor's report.*

SECTION 17. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The Commonwealth Participation Program for State Real Property Ad Valorem Tax Revenues is hereby established.*
- (2) *State participation under this program shall be limited to the support of approved public infrastructure costs determined to be necessary to support private investment or private development projects that benefit the public, where project economics are unable to support or secure necessary financing to undertake the public improvements.*
- (3) *A project shall meet all of the following criteria to be considered for state participation under this program:*
 - (a) *The project shall represent new economic activity in the Commonwealth;*
 - (b) *The project shall result in a minimum capital investment of ten million dollars (\$10,000,000); and*
 - (c) *Not more than twenty percent (20%) of the capital investment or twenty percent (20%) of the finished square footage shall be devoted to the support or development of assets that will be utilized for the retail sale of tangible personal property.*
- (4) *The commission shall review the application and supporting information as provided in Section 16 of this Act.*
- (5) *The commission may pledge up to one hundred percent (100%) of the Commonwealth's state real property ad valorem tax incremental revenue from the footprint of a project, provided that the maximum amount of incremental revenues that may be pledged during the term of the state participation agreement for a project shall not exceed one hundred percent (100%) of approved public infrastructure costs.*
- (6) *As part of the approval process, the commission shall determine the following:*
 - (a) *The footprint of the project;*
 - (b) *The maximum amount of approved public infrastructure costs;*
 - (c) *That the local revenues pledged to support the public infrastructure of the project, and local revenues pledged to support the overall project are of a sufficient amount to warrant participation of the Commonwealth in the project;*
 - (d) *The termination date of the project grant agreement, not to exceed twenty (20) years from the activation date; and*
 - (e) *Any adjustments to be made to old revenues in determining incremental revenues during each year of the term of the project grant agreement.*
- (7) *The pledge of incremental state real property ad valorem tax revenues of the Commonwealth by the commission shall be implemented through the execution of a project grant agreement between the Commonwealth and the agency, city, or county, in accordance with Section 20 of this Act.*

SECTION 18. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The Signature Project Program is hereby established. The purpose of this program is to encourage private investment in the development of major projects that will have a significant impact on the Commonwealth of Kentucky and are judged to be of such a magnitude that the effect upon the location of such project warrants extraordinary public support.*
- (2) *There shall be two (2) separate initiatives under this program. The first initiative, the criteria and details of which are set forth in paragraph (a) of this subsection, shall apply to qualifying projects that are not the subject of a contract under KRS 65.495 in effect on or before the effective date of this Act, but that have a project grant agreement executed pursuant to Section 20 of this Act prior to January 1, 2008. The second initiative, the criteria and details of which are set forth in paragraph (b) of this subsection, shall apply to projects that meet the specified requirements on or after January 1, 2008.*

- (a) *For projects that are not the subject of a contract under KRS 65.495 in effect on or before the effective date of this Act, but that have a project grant agreement executed pursuant to the provisions of Section 20 of this Act prior to January 1, 2008:*

1. *The criteria for qualification shall be as follows:*
 - a. *The project shall represent new economic activity in the Commonwealth; and*
 - b. *The project shall result in a minimum capital investment of two hundred million dollars (\$200,000,000).*
2. *The following provisions shall apply to projects that meet the criteria established in subparagraph 1. of this paragraph:*
 - a. *Section 6 of this Act shall not apply to the establishment of a development area;*
 - b. *The city or county in which the project is located shall adopt an ordinance establishing the development area. The ordinance shall be adopted in accordance with subsection (1)(a), (b), (c), (d), (e), (h), (i), (j), (k), (l), and (m) of Section 7 of this Act;*
 - c. *Section 5, subsections (2) and (3) of Section 7 and Sections 9, 10, 11, 12, 13, and 14 of this Act, relating to local development areas, shall apply;*
 - d. *An application for state participation shall be submitted as provided in Section 16 of this Act. The application shall include the information required by subsection (2)(a)1.a. and b. of Section 16 of this Act;*
 - e. *The report provided for in subsection (2)(a)3.b. of Section 16 of this Act shall not be required, and the certification required by subsection (6)(b) of Section 16 of this Act shall not be required;*
 - f. *A project grant agreement shall be executed in accordance with Section 20 of this Act; and*
 - g. *Sections 21 and 22 of this Act shall apply.*
3. *Projects that meet the criteria established in subparagraph 1. of this paragraph shall be eligible for the following:*
 - a. *Up to one hundred percent (100%) of approved public infrastructure costs, excluding any sales and use tax paid, may be recovered;*
 - b. *Up to one hundred percent (100%) of the financing costs associated with approved public infrastructure costs may be recovered;*
 - c. *In a county containing a city of the first class, the local participation agreement may provide for the release of up to eighty percent (80%) of the increment from the tax levied under Section 27 of this Act derived by the governing body within the project development area. The amount released shall not exceed a base amount of four hundred thousand dollars (\$400,000) in the first year of the local participation agreement, which base amount shall be increased in each subsequent year of the grant agreement by four percent (4%); and*
 - d. *Up to one hundred percent (100%) of approved signature project costs, excluding any sales and use taxes paid, subject to the following:*
 - i. *The commission shall review proposed expenditures for inclusion in the project grant agreement. The commission may approve the type of expenditures it determines are necessary for completion of the private development; and*
 - ii. *Approved signature project costs shall be detailed in the project grant agreement.*

- (b) *Beginning January 1, 2008:*

1. *A project shall meet all of the following criteria to be considered for state participation under this program:*
 - a. *The project shall represent new economic activity in the Commonwealth;*

- b. *The project shall result in a minimum capital investment of two hundred million dollars (\$200,000,000);*
 - c. *The project shall result in a net positive economic impact to the Commonwealth, taking into consideration any substantial adverse impact on existing Commonwealth businesses. The net positive impact shall be certified to the commission as required by subsection (6)(b) of Section 16 of this Act; and*
 - d. *Not more than twenty percent (20%) of the capital investment or twenty percent (20%) of the finished square footage shall be devoted to the support or development of assets that will be utilized for the retail sale of tangible personal property.*
- 2. *Projects that meet the criteria established by subparagraph 1. of this paragraph shall comply with all relevant provisions of Sections 1 to 22 of this Act.*
- 3. *Projects that meet the criteria established by subparagraphs 1. and 2. of this paragraph shall be eligible to recover:*
 - a. *Up to one hundred percent (100%) of approved public infrastructure costs, excluding any sales and use taxes paid;*
 - b. *Up to one hundred percent (100%) of the financing costs associated with approved public infrastructure costs; and*
 - c. *Up to one hundred percent (100%) of approved signature project costs, excluding sales and use taxes paid subject to the following:*
 - i. *The commission shall review proposed expenditures for inclusion in the project grant agreement. The commission may approve the type of expenditures it determines are necessary for completion of the private development; and*
 - ii. *Approved signature project costs shall be detailed in the project grant agreement.*
- (3) *The commission shall review the application, the certification required by Section 16 of this Act, if applicable, and supporting information as provided in Section 16 of this Act.*
- (4) *The commission shall specifically identify the state taxes from which incremental revenues will be pledged. The commission may pledge up to eighty percent (80%) of the incremental revenues from the identified state tax revenues from the footprint of the project, provided that the maximum amount of incremental revenues that may be pledged for a project during the term of the state participation agreement from all approved state taxes shall not exceed one hundred percent (100%) of approved public infrastructure costs, approved signature project costs, and financing costs.*
- (5) *As part of the approval process, the commission shall determine the following:*
 - (a) *The footprint of the project;*
 - (b) *The maximum amount of approved public infrastructure costs, approved signature project costs, and financing costs;*
 - (c) *That the local revenues pledged to support the public infrastructure of the project, and local revenues pledged to support the overall project are of a sufficient amount to warrant participation of the Commonwealth in the project;*
 - (d) *The termination date of the project grant agreement, not to exceed thirty (30) years from the activation date;*
 - (e) *Any adjustments to be made to old revenues, in determining incremental revenues during each year of the term of the project grant agreement; and*
 - (f) *Any approved signature project costs;*
- (6) *For the purpose of making the certification required by subsection (2) of Section 28 of this Act, the commission shall review the projected expenditures for tangible personal property used in the construction of a signature project, as defined in subsection (1) of Section 28 of this Act, and shall establish an*

approximate percentage of the total anticipated expenditures that are not included in the project grant agreement as approved public infrastructure costs or approved signature project costs. This percentage shall be communicated by the office to the Department of Revenue, which shall use the information in administering the sales tax refund permitted by Section 28 of this Act.

- (7) *If state income taxes or local occupational license taxes are included for a project that includes office space, the commission shall consider the impact of pledging these taxes on the ability to utilize other economic development projects at a later date.*
- (8) *The pledge of state incremental tax revenues of the Commonwealth by the commission shall be implemented through the execution of a project grant agreement between the Commonwealth and the agency, city, or county in accordance with Section 20 of this Act.*

SECTION 19. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The Commonwealth Participation Program for Mixed Use Redevelopment in Blighted Urban Areas is hereby established.*
- (2) *State participation under this program shall be limited to the support of approved public infrastructure costs and costs associated with land preparation, demolition, and clearance determined to be necessary to support private investment or private development projects that benefit the public, where project economics are unable to support or secure necessary financing to undertake the public improvements, land preparation, demolition, and clearance.*
- (3) *As used in this section:*
 - (a) *"Mixed-use" means a project that includes at least two qualified uses;*
 - (b) *"Qualified use" means:*
 - 1. *Retail;*
 - 2. *Residential;*
 - 3. *Office;*
 - 4. *Restaurant; or*
 - 5. *Hospitality.*

To be a qualified use, the use must comprise at least twenty percent (20%) of the total finished square footage of the proposed project or represent twenty percent (20%) of the total capital investment; and
 - (c) *"Retail" means an establishment predominantly engaged in the sale of tangible personal property subject to the tax imposed by KRS Chapter 139, but shall not include restaurants.*
- (4) *To be considered for state participation under this program, a project shall:*
 - (a) *Be located in an area that has three (3) or more of the conditions listed in subsection (3) of Section 5 of this Act;*
 - (b) *Be a mixed use project;*
 - (c) *Represent new economic activity in the Commonwealth;*
 - (d) *Result in a capital investment between twenty million dollars (\$20,000,000) and two hundred million dollars (\$200,000,000);*
 - (e) *Not include any retail establishment that exceeds twenty thousand (20,000) square feet of finished square footage;*
 - (f) *Include pedestrian amenities and public space; and*
 - (g) *Result in a net positive economic impact to the Commonwealth, taking into consideration any substantial adverse impact on existing Commonwealth businesses. The net positive impact shall be certified to the commission as required by subsection (6)(b) of Section 16 of this Act.*
- (5) *The following costs may be recovered pursuant to this section:*
 - (a) *Up to one hundred percent (100%) of approved public infrastructure costs; and*

- (b) *Up to one hundred percent (100%) of expenses for land preparation, demolition, and clearance necessary for the development to occur.*
- (6) *The commission shall review the application, the certification required by Section 16 of this Act, and supporting information as provided in Section 16 of this Act.*
- (7) *The commission shall specifically identify the state taxes from which incremental revenues will be pledged. The commission may pledge up to eighty percent (80%) of the incremental revenues from the identified state tax revenues from the footprint of the project, provided that the maximum amount of incremental revenues that may be pledged for a project during the term of the state participation agreement from all approved state taxes shall not exceed the costs and expenses determined under subsection (5) of this section.*
- (8) *As part of the approval process, the commission shall determine the following:*
 - (a) *The footprint of the project;*
 - (b) *That the proposed project meets the requirements established by subsection (4) of this section;*
 - (c) *The maximum amount of approved public infrastructure costs and expenses for land preparation, demolition, and clearance;*
 - (d) *That the local revenues pledged to support the public infrastructure of the project and local revenues pledged to support the overall project are of a sufficient amount to warrant participation of the Commonwealth in the project;*
 - (e) *The termination date of the project grant agreement; and*
 - (f) *Any adjustments to be made to old revenues, in determining incremental revenues during each year of the term of the project grant agreement.*
- (9) *If state income taxes or local occupational licenses taxes are included for a project that includes office space, the commission shall consider the impact of pledging these taxes on the ability to utilize other economic development projects at a later date.*
- (10) *The pledge of state incremental tax revenues of the Commonwealth by the commission shall be implemented through the execution of a project grant agreement between the Commonwealth and the agency, city, or county in accordance with Section 20 of this Act.*

SECTION 20. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The terms and conditions of the project grant agreement shall be negotiated between the commission and the agency. The project grant agreement shall include but not be limited to the following provisions:*
 - (a) *Identification of the parties to the project grant agreement and the duties and responsibilities of each party to the project grant agreement;*
 - (b) *The specific identification of the state tax revenues, by type of tax, to be released or pledged by the Commonwealth for the project;*
 - (c)
 1. *A detailed summary of old revenues collected and projected new revenues for the Commonwealth on an annual basis for the term of the project grant agreement; and*
 2. *The maximum amount of incremental revenue to be released by the Commonwealth and the maximum number of years the pledge of incremental revenues will be effective;*
 - (d) *A detailed description of each project that is the subject of the project grant agreement, including an estimate of the costs of construction or acquisition and development;*
 - (e) *Identification of the project footprint from which the state incremental revenues pledged by the Commonwealth are to be derived;*
 - (f) *The approved public infrastructure costs and, when applicable, approved signature project costs, approved financing costs, and approved costs relating to land preparation, demolition, and clearance that may be recovered;*
 - (g) *The minimum capital investment required, and the date by which the minimum capital investment is expected to occur;*

- (h) *Terms of default and remedies, provided that no remedy shall permit the withholding by any party to the project grant agreement of any incremental revenues if increment bonds are outstanding that are secured by a pledge of those incremental revenues;*
 - (i) *The termination date;*
 - (j) *A requirement that the agency, city, or county annually certify to the office the use of incremental revenues for the payment of approved project costs within the development area;*
 - (k) *A requirement that the agency shall utilize the portion of incremental revenues pledged pursuant to a project grant agreement that exceeds, in a given year, the amounts needed to:*
 - 1. *Pay the current financing costs; and*
 - 2. *Maintain a fully funded reserve;**to provide for the retirement or defeasance of all or a portion of the remaining financing costs related to approved public infrastructure costs, and approved signature project costs secured by the incremental revenues;*
 - (l) *A requirement that the agency, city, or county make periodic accountings to the office;*
 - (m) *A requirement that the office monitor and verify approved public infrastructure costs, financing costs and approved signature project costs and minimum capital investment; and*
 - (n) *For a signature project, the eligible refund percentage for the sales tax as permitted under Section 28 of this Act, and as determined by the commission pursuant to subsection (6) of Section 18 of this Act; and*
 - (o) *Any other provisions not inconsistent with Sections 1 to 22 of this Act deemed necessary or appropriate by the parties to the project grant agreement.*
- (2) *Any pledge of incremental revenues in a project grant agreement shall be superior to any other pledge of revenues for any other purpose and shall, from the activation date to the termination date, supersede any statute or ordinance regarding the application or use of incremental revenues. An ordinance in conflict with a project grant agreement shall not be adopted while any increment bonds secured by that pledge remain outstanding. Ordinances pledging increments on a subordinate basis to any existing pledges may be adopted.*
 - (3) *Any project grant agreement shall be made on the basis of automatic year-to-year renewals, with the option to discontinue upon sixty (60) days' notice before the end of any annual termination date of the project grant agreement.*

SECTION 21. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Prior to any incremental revenues being released by the Commonwealth for any project, the office shall certify that the minimum capital investment has been made as required by the project grant agreement.*
- (b) *Incremental revenues received after the activation date but prior to certification of the minimum capital investment being made shall be held in a non-interest bearing escrow account by the Commonwealth until the minimum capital investment is certified by the office. The incremental revenues shall be released to the agency upon certification. If the minimum capital investment is not certified within the time period established by the commission, the escrow shall be forfeited to the Commonwealth.*
- (2) *The office shall monitor all project grant agreements and shall verify for each project expenditure identified as approved public infrastructure costs and where applicable, financing costs, approved signature project costs and expenses for land preparation, demolition and clearance.*
- (3) *The office shall track the amount of incremental revenues released to each agency under each project grant agreement.*
- (4) *The office shall prepare a quarterly report for the commission updating the status of each project subject to a project grant agreement, including expenditures qualifying as approved public infrastructure costs and, where applicable, financing costs, approved signature project costs, and expenses for land preparation, demolition and clearance to date and incremental revenues from the Commonwealth released to date.*

SECTION 22. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Any agency that enters into a local participation agreement, local development area agreement, or project grant agreement for the release of incremental revenues during the period of a local participation agreement, local development area agreement, or project grant agreement shall, after each calendar year, in which a local participation agreement, local development area agreement, or project grant agreement is in effect, notify each taxing district obligated under the local participation agreement or local development area agreement and the Commonwealth, if applicable, that incremental revenues are due and, in consultation with each taxing district, and the Commonwealth, if applicable, the agency shall determine the amount of incremental revenues due from each taxing district or the Commonwealth, if applicable.*
- (b) *The agency shall present to the office the total increment due from the Commonwealth. The office shall review and verify the information submitted and shall certify the verified amount.*
- (2) *Upon notice from the agency, each taxing district obligated under a local participation agreement or local development area agreement shall release to the agency the incremental revenues due under the local participation agreement or local development area agreement. The agency shall certify to the office on a calendar year basis the amount of incremental revenues collected.*
- (3) *Upon certification of the total incremental revenues due from the Commonwealth by the office, the Department of Revenue shall transfer the incremental revenues to a tax increment financing account established and administered by the Finance and Administration Cabinet for payment of the Commonwealth's portion of the incremental revenues. Prior to disbursement by the Finance and Administration Cabinet of the funds from the tax increment financing account, the office shall notify the Finance and Administration Cabinet that the agency is in compliance with the terms of the project grant agreement. Upon notification, the Finance and Administration Cabinet shall release to the agency the Commonwealth's portion of the total incremental revenues due under the project grant agreement.*
- (4) *The Department of Revenue or local taxing district shall have no obligation to refund or otherwise return any of the incremental revenues to the taxpayer from whom the incremental revenues arose or are attributable. Further, no additional incremental revenues resulting from audit, amended returns, or other activity for any period shall be transferred to the tax increment financing account after the initial release to the agency of the taxing district's or Commonwealth's increment for that period.*

SECTION 23. A NEW SECTION OF KRS 65.490 TO 65.499 IS CREATED TO READ AS FOLLOWS:

Effective on the effective date of this Act, the provisions of KRS 65.490 to 65.499 shall apply only to development areas which were established by a county containing a city of the first class or a city of the first class prior to the effective date of this Act, and that are subject to the provisions of a grant contract, Interlocal Cooperation Agreement or Master Agreement executed prior to the effective date of this Act.

SECTION 24. A NEW SECTION OF KRS 65.680 TO 65.699 IS CREATED TO READ AS FOLLOWS:

Effective on the effective date of this Act, the provisions of KRS 65.680 to 65.699 shall apply only to development areas which are:

- (1) *Established under KRS 65.686 by a city or county prior to the effective date of this Act; and*
- (2) *Subject to the provisions of a grant contract executed prior to the effective date of this Act.*

Section 25. KRS 132.012 is amended to read as follows:

As used in this section and in KRS 92.305 and 91.285, unless the context otherwise requires:

- (1) "Abandoned urban property" means any vacant structure or vacant or unimproved lot or parcel of ground in a predominantly developed urban area which has been vacant or unimproved for a period of at least one (1) year and which:
 - (a) Because it is dilapidated, unsanitary, unsafe, vermin infested, or otherwise dangerous to the safety of persons, it is unfit for its intended use; or
 - (b) By reason of neglect or lack of maintenance has become a place for the accumulation of trash and debris, or has become infested with rodents or other vermin; or

- (c) Has been tax delinquent for a period of at least three (3) years; *or*
 - (d) *Is located within a development area established under Sections 5, 6, and 7 of this Act.*
- (2) For purposes of local taxation in cities of any class or consolidated local governments, there shall be a classification of real property known as abandoned urban property. The legislative body of a city of any class, county containing a city of the first class, or consolidated local government may levy a rate of taxation on abandoned urban property higher than the prevailing rate of taxation on other real property in the city, county containing a city of the first class, or consolidated local government. The limitation upon tax rates established by KRS 132.027 shall not apply to the rate of taxation on abandoned urban property.

Section 26. KRS 131.020 is amended to read as follows:

- (1) The Department of Revenue, headed by a commissioner appointed by the secretary with the approval of the Governor, shall be organized into the following functional units:
- (a) *Office of the Commissioner of the Department of Revenue, which shall include but not be limited to the Division of Tax Increment Financing, headed by a director appointed by the secretary of the Finance and Administration Cabinet. The division shall analyze and assist in implementing proposed state tax increment financing projects, including working with other government agencies to gather and evaluate the necessary tax related data for these proposed projects. The division shall work with the project agency in administering the grant contract and shall serve as the record keeping unit for all state tax increment financing projects;*
 - (b) Division of Legislative Services, headed by a division director who shall report to the commissioner of the Department of Revenue. The division shall perform such duties as providing support to the commissioner's office; managing the department's legislative efforts, including developing and drafting proposed tax legislation, coordinating review of proposed legislation, and coordinating development of administrative regulations; providing technical support and research assistance to all areas of the department; performing studies, surveys, and research projects to assist in policy-making decisions; and performing various miscellaneous duties, including working on special projects and conducting training;
 - (c)~~(b)~~ Office of Processing and Enforcement, headed by an executive director who shall report directly to the commissioner. The office shall be responsible for processing documents, depositing funds, collecting debt payments, and coordinating, planning, and implementing a data integrity strategy. The office shall consist of the:
 1. Division of Operations, which shall be responsible for opening all tax returns, preparing the returns for data capture, coordinating the data capture process, depositing receipts, maintaining tax data, and assisting other state agencies with similar operational aspects as negotiated between the department and the other agency;
 2. Division of Collections, which shall be responsible for initiating all collection enforcement activity related to due and owing tax assessments and for assisting other state agencies with similar collection aspects as negotiated between the department and the other state agency; and
 3. Division of Registration and Data Integrity, which shall be responsible for registering businesses for tax purposes, ensuring that the data entered into the department's tax systems is accurate and complete, and assisting the taxing areas in proper procedures to ensure the accuracy of the data over time;
 - (d)~~(e)~~ Office of the Taxpayer Ombudsman. The Office of the Taxpayer Ombudsman shall be headed by an executive director, functioning as the taxpayer ombudsman as established by KRS 131.051(1) and 131.071, who shall report to the commissioner. The functions and duties of the office shall consist of those established by KRS 131.071;
 - (e)~~(d)~~ Office of Property Valuation. The Office of Property Valuation shall be headed by an executive director who shall report directly to the commissioner. The functions and duties of the office shall include mapping, providing assistance to property valuation administrators, supervising the property valuation process throughout the Commonwealth, valuing the property of public service companies, valuing unmined coal and other mineral resources, administering personal property taxes, and collecting delinquent taxes. The Office of Property Valuation shall consist of the Divisions of:

1. Local Valuation, which shall oversee the real property tax assessment and collection process throughout the state in each county's property valuation administrator's and sheriff's office;
 2. State Valuation, which shall administer all state-assessed taxes, including public service property tax, motor vehicle property tax, and the tangible and intangible tax program; and
 3. Minerals Taxation and GIS Services, which shall administer the severance tax and unmined minerals property tax programs and coordinate the department's geographical information system (GIS);
- ~~(f)(e)~~ Office of Sales and Excise Taxes, headed by an executive director who shall report directly to the commissioner. The office shall administer all matters relating to sales and use taxes and miscellaneous excise taxes, including but not limited to technical tax research, compliance, taxpayer assistance, tax-specific training, and publications. The office shall consist of the:
1. Division of Sales and Use Tax, which shall administer the sales and use tax; and
 2. Division of Miscellaneous Taxes, which shall administer various other taxes, including but not limited to alcoholic beverage taxes; cigarette enforcement fees, stamps, meters, and taxes; gasoline tax; bank franchise tax; inheritance and estate tax; insurance premiums and insurance surcharge taxes; motor vehicle tire fees and usage taxes; and special fuels taxes;
- ~~(g)(f)~~ Office of Income Taxation, headed by an executive director who shall report directly to the commissioner. The office shall administer all matters related to income and corporation license taxes, including technical tax research, compliance, taxpayer assistance, tax-specific training, and publications. The office shall consist of the:
1. Division of Individual Income Tax, which shall administer the following taxes or returns: individual income, fiduciary, and employer withholding; and
 2. Division of Corporation Tax, which shall administer the corporation income tax, corporation license tax, pass-through entity withholding, and pass-through entity reporting requirements; and
- ~~(h)(g)~~ Office of Field Operations, headed by an executive director who shall report directly to the commissioner. The office shall manage the regional taxpayer service centers and the field audit program.
- (2) The functions and duties of the department shall include conducting conferences, administering taxpayer protests, and settling tax controversies on a fair and equitable basis, taking into consideration the hazards of litigation to the Commonwealth of Kentucky and the taxpayer. The mission of the department shall be to afford an opportunity for taxpayers to have an independent informal review of the determinations of the audit functions of the department, and to attempt to fairly and equitably resolve tax controversies at the administrative level.
 - (3) The department shall maintain an accounting structure for the one hundred twenty (120) property valuation administrators' offices across the Commonwealth in order to facilitate use of the state payroll system and the budgeting process.
 - (4) Except as provided in KRS 131.190(4), the department shall fully cooperate with and make tax information available as prescribed under KRS 131.190(2) to the Governor's Office for Economic Analysis as necessary for the office to perform the tax administration function established in KRS 42.410.
 - (5) Executive directors and division directors established under this section shall be appointed by the secretary with the approval of the Governor.

Section 27. KRS 91A.390 is amended to read as follows:

- (1) The commission shall annually submit to the local governing body or bodies which established it a request for funds for the operation of the commission. The local governing body or bodies shall include the commission in the annual budget and shall provide funds for the operation of the commission by imposing a transient room tax, not to exceed three percent (3%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. In addition to the three percent (3%), the local governing body may impose a special transient room tax not to exceed one percent

(1%) for the sole purpose of meeting the operating expenses of a convention center. A transient room tax imposed by an urban-county government shall not exceed four percent (4%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. Transient room taxes shall not apply to the rental or leasing of an apartment supplied by an individual or business that regularly holds itself out as exclusively providing apartments. Apartment means a room or set of rooms, in an apartment building, fitted especially with a kitchen and usually leased as a dwelling for a minimum period of thirty (30) days or more. The local governing body or bodies that have established a commission by joint or separate action shall enact an ordinance for the enforcement of the tax measure enacted pursuant to this section and the collection of the proceeds of this tax measure on a monthly basis.

- (2) All moneys collected pursuant to this section and KRS 91A.400 shall be maintained in an account separate and unique from all other funds and revenues collected, and shall be considered tax revenue for the purposes of KRS 68.100 and KRS 92.330.
- (3) A portion of the money collected from the imposition of this tax, as determined by the tax levying body, upon the advice and consent of the tourist and convention commission, may be used to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business, ***including projects described in subsection (2)(a) of Section 18 of this Act.*** The balance of the money collected from the imposition of this tax shall be used for the purposes set forth in KRS 91A.350. Proceeds of the tax shall not be used as a subsidy in any form to any hotel, motel, or restaurant, ***except as provided in subsection (2)(a)3.c. of Section 18 of this Act.*** Money not expended by the commission during any fiscal year shall be used to make up a part of the commission's budget for its next fiscal year.
- (4) A county with a city of the first class may impose an additional tax, not to exceed one and one-half percent (1.5%) of the room rent. This additional tax, if approved by the local governing body, shall be collected and administered in the same manner as the regular tax and shall be used for the purpose of funding additional promotion of tourist and convention business.
- (5) An urban-county government may impose an additional tax, not to exceed one percent (1%) of the room rents included in this subsection. This additional tax shall be collected and administered in the same manner as the regular tax with the exception that this additional tax shall be used for the purpose of funding the purchase of development rights program provided for under KRS 67A.845.
- (6) Local governing bodies which have formed multicounty tourist and convention commissions as provided by KRS 91A.350(3) may impose an additional tax, not to exceed one percent (1%) of the room rents. This additional tax, if approved by each governing body, shall be collected and administered in the same manner as the regular tax, with the exception that this additional tax shall be used for the purpose of funding regional efforts relating to the promotion of tourist and convention business and convention centers. In no event shall any revenues collected as provided for under KRS 91A.350(3) be utilized for the construction, renovation, maintenance, or additions to any convention center that is located outside the boundaries of the Commonwealth of Kentucky.
- (7) The commission, with the approval of the tax levying body, may borrow money to pay its obligations that cannot be paid at maturity out of current revenue from the transient room tax, but shall not borrow a sum greater than can be repaid out of the revenue anticipated from the transient room tax during the year the money is borrowed. The commission may pledge its securities for the repayment of any sum borrowed.
- (8) The fiscal court or legislative body of a consolidated local government or city establishing a commission pursuant to KRS 91A.350(1) or (2) and, in its own name, a commission established pursuant to KRS 91A.350(1) is authorized and empowered to issue revenue bonds pursuant to KRS Chapter 58 for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county, consolidated local government, or city. All bonds sold under the authority of this section shall be subject to competitive bidding as provided by law, and shall bear interest at a rate not to exceed that established for bonds issued for public projects under KRS Chapter 58.

- (9) A commission established pursuant to KRS 91A.350(3) is authorized and empowered to issue revenue bonds in its own name, payable solely from its income and revenue, pursuant to KRS Chapter 58 for revenue bonds for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county. All bonds sold pursuant to this section shall be subject to competitive bidding as provided by law, and shall not bear interest at rates exceeding those for bonds issued for public projects under KRS Chapter 58.

SECTION 28. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Agency" has the same meaning as in Section 3 of this Act;*
- (b) *"Signature project" means a project that meets the requirements established by Section 18 of this Act; and*
- (c) *"Tangible personal property used in the construction of a signature project" means tangible personal property that:*

- 1. *Consists of:*

- a. *Permanently incorporated building materials and fixtures that are an improvement to real property on the signature project;*
- b. *Building materials temporarily incorporated into the signature project for infrastructure support during construction; or*
- c. *Temporarily incorporated specialized forms for concrete that are for exclusive use on the qualifying signature project; and*

- 2. *Is not machinery or equipment.*

- (2) (a) *Notwithstanding any other provision of KRS Chapter 139 and KRS 134.580, the sales or use tax paid on the purchase of tangible personal property used in the construction of the portion of a signature project that does not relate to approved public infrastructure costs or approved signature project costs, as defined in Section 3 of this Act, may be refunded to the agency under the conditions established by subsection (3) of this section.*
- (b) *The office, as defined in subsection (29) of Section (3) of this Act, shall notify the department upon the approval of a signature project. The notification shall include the name of the signature project, the name of the agency, the name of the project developer, the commencement date of the project grant agreement, and the percentage of total anticipated expenditures for tangible personal property used in the construction of a signature project that are not included in the project grant agreement as approved public infrastructure costs or approved signature project costs.*
- (c) *The department shall determine the total amount of eligible refund by multiplying total sales and use tax paid during the period covered by the application by the percentage provided by the office under the provisions of paragraph (b) of this subsection reduced by the amount of vendor compensation taken in accordance with KRS 139.570.*
- (3) *To qualify for the refund established by subsection (2) of this section, the agency shall collect from the purchasers of tangible personal property used in the construction of the signature project all documentation relating to the payment of sales or use tax, and shall file an application for refund of the sales or use tax paid by the purchasers as reflected in the documentation collected. Requests for refund shall be filed annually during the first twelve (12) years the project grant agreement is in effect, and shall cover purchases made during the immediately preceding year. Requests for refund shall be filed in the manner directed by the cabinet.*
- (4) *The agency shall file the first year refund request within sixty (60) days following the end of the fiscal year in which the project grant agreement is executed. The agency shall file the final refund request within sixty*

(60) days following the end of the eleventh fiscal year following the fiscal year in which the project grant agreement was executed, or within sixty (60) days after construction is complete, whichever date is earlier. All other annual refund requests shall be filed within sixty (60) days after the completion of each fiscal year.

- (5) Interest shall not be allowed or paid on any refund made under the provisions of this section.*
- (6) The agency shall execute information sharing agreements prescribed by the department with contractors, vendors, and other related parties to verify construction material costs.*

Section 29. Whereas there are some projects that need to begin immediately, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 23, 2007.

CHAPTER 96

(HB 287)

AN ACT relating to the Uniform Emergency Volunteer Health Practitioners Act.

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

SECTION 1. KRS CHAPTER 39G IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 9 of this Act:

- (1) "Disaster relief organization" means an entity that provides emergency or disaster relief services that include health services provided by volunteer health practitioners and that:*
 - (a) Is designated or recognized as a provider of those services pursuant to a disaster response and recovery plan adopted by an agency of the federal government or the Kentucky Division of Emergency Management; or*
 - (b) Regularly plans and conducts its activities in coordination with an agency of the federal government or the Kentucky Division of Emergency Management;*
- (2) "Emergency" has the same meaning as used in KRS 39A.020;*
- (3) "Emergency declaration" has the same meaning as "declared emergency" as used in KRS 39A.020;*
- (4) "Emergency Management Assistance Compact" means the interstate compact established under KRS 39A.950;*
- (5) "Health facility" has the same meaning as used in KRS 216B.015;*
- (6) "Health practitioner" means an individual licensed under the laws of this or another state to provide health services;*
- (7) "Health services" means:*
 - (a) The provision of treatment, care, advice or guidance, other services, or supplies related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:*
 - 1. The following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:*
 - a. Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and*
 - b. Counseling, assessment, procedures, or other services;*
 - 2. Sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription; and*
 - 3. Funeral, cremation, cemetery, or other mortuary services; or*

- (b) *The provision of treatment, care, advice or guidance, other services, or supplies related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:*
 - 1. *Diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of vaccine, medicine, surgery, or therapy;*
 - 2. *Use of a procedure for reproductive management; and*
 - 3. *Monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans;*
- (8) *"Host entity" means an entity operating in this state which uses volunteer health practitioners to respond to an emergency;*
- (9) *"License" means authorization by a state to engage in health services that are unlawful without the authorization. The term includes authorization under the laws of this state to an individual to provide health services based upon a national certification issued by a public or private entity;*
- (10) *"Scope of practice" means the extent of the authorization to provide health services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing authority; and*
- (11) *"Voluntary health practitioner" means a health practitioner who provides health services, whether or not the practitioner receives compensation for those services. The term does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate which requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 39G IS CREATED TO READ AS FOLLOWS:

Sections 1 to 9 of this Act shall apply to volunteer health practitioners registered with a registration system that complies with Section 4 of this Act and who provide health services in this state for a host entity while an emergency declaration is in effect.

SECTION 3. A NEW SECTION OF KRS CHAPTER 39G IS CREATED TO READ AS FOLLOWS:

- (1) *While an emergency declaration is in effect, the Cabinet for Health and Family Services in coordination with the Kentucky Division of Emergency Management and the appropriate Kentucky licensure boards may regulate:*
 - (a) *The duration and scope of practice by volunteer health practitioners;*
 - (b) *The geographical areas in which volunteer health practitioners may practice;*
 - (c) *The types of volunteer health practitioners who may practice; and*
 - (d) *Any other matters necessary to coordinate effectively the provision of health services during the emergency.*
- (2) *An order issued pursuant to subsection (1) of this section may take effect immediately, without prior notice or comment.*
- (3) *A host entity that uses volunteer health practitioners to provide health services in this state shall:*
 - (a) *Consult and coordinate its activities with the Cabinet for Health and Family Services to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and*
 - (b) *Comply with any laws relating to the management of emergency health services, in addition to Sections 1 to 9 of this Act.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 39G IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Health and Family Services shall operate the emergency system for advanced registration of volunteer health practitioners. The system shall:*

- (a) *Accept applications for the registration of volunteer health practitioners before or during an emergency;*
- (b) *Include information about the licensure and good standing of health practitioners that is accessible by authorized persons; and*
- (c) *Be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services are provided under Sections 1 to 9 of this Act.*
- (2) *The following organizations may maintain a list consisting of trained and equipped emergency response, public health, and medical personnel:*
 - (a) *Local units formed under Section 300hh of Title 42 of the United States Code;*
 - (b) *Disaster relief organizations;*
 - (c) *Licensing boards;*
 - (d) *National or regional associations of licensing boards of health practitioners;*
 - (e) *Health facilities that provide comprehensive inpatient and outpatient health-care services, including a tertiary care and teaching hospital; or*
 - (f) *Governmental entities.*
- (3) *The organizations listed in subsection (2) of this section shall develop a collaborative relationship with the cabinet for the purposes of Sections 1 to 9 of this Act and for the purposes of being recognized by the cabinet as a voluntary response resource.*
- (4) *The cabinet may receive state appropriations, gifts, grants, federal funds, and any other public or private funds to establish or maintain the registration system established in subsection (1) of this section.*
- (5) *While an emergency declaration is in effect, representatives of the Cabinet for Health and Family Services or a host entity may confirm whether volunteer health practitioners utilized in this state are registered with the registration system that complies with subsection (1) of this section. Confirmation is limited to obtaining identities of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing.*
- (6) *Upon request of a person in this state authorized under subsection (2) of this section, or a similarly authorized person in another state, a registration system located in this state shall notify the person of the identities of volunteer health practitioners and whether the practitioners are licensed and in good standing.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 39G IS CREATED TO READ AS FOLLOWS:

A volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other laws of this state.

SECTION 6. A NEW SECTION OF KRS CHAPTER 39G IS CREATED TO READ AS FOLLOWS:

- (1) *Sections 1 to 9 of this Act shall not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than Sections 1 to 9 of this Act.*
- (2) *Sections 1 to 9 of this Act shall not affect requirements for the use of health practitioners pursuant to the Emergency Management Assistance Compact.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 39G IS CREATED TO READ AS FOLLOWS:

The Cabinet for Health and Family Services may promulgate administrative regulations to implement Sections 1 to 9 of this Act. In doing so, the Cabinet for Health and Family Services shall consult with and consider the recommendations of the Kentucky Division of Emergency Management and shall also consult with and consider administrative regulations promulgated by similarly empowered agencies in other states to promote uniformity of application of Sections 1 to 9 of this Act and make the emergency response systems in the various states reasonably compatible.

SECTION 8. A NEW SECTION OF KRS CHAPTER 39G 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 9. A NEW SECTION OF KRS CHAPTER 39G IS CREATED TO READ AS FOLLOWS:

Sections 1 to 9 of this Act shall be known as the Good Samaritan Act of 2007.

Section 10. KRS 311.560 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, no person shall engage or attempt to engage in the practice of medicine or osteopathy within this state, or open, maintain, or occupy an office or place of business within this state for engaging in practice, or in any manner announce or express a readiness to engage in practice within this state, unless the person holds a valid and effective license or permit issued by the board as hereinafter provided.
- (2) The provisions of subsection (1) of this section shall not apply to:
 - (a) Commissioned medical officers of the Armed Forces of the United States, or medical officers of the United States Public Health Service, the United States Veterans Administration, and other agencies of the government of the United States of America, while said persons are engaged in the performance, within this state, of their official duties under federal laws;
 - (b)
 1. Persons who, being nonresidents of Kentucky and lawfully licensed to practice medicine or osteopathy in their states of actual residence, infrequently engage in the practice of medicine or osteopathy within this state, when called to see or attend particular patients in consultation and association with a physician licensed pursuant to this chapter; or
 2. Persons who, being current participants in a medical residency program outside of Kentucky and lawfully licensed to practice medicine or osteopathy in the states of their medical residency programs, who participate in a temporary residency rotation of no more than sixty (60) days at a hospital in this Commonwealth. All persons who participate in a temporary residency rotation under this paragraph shall register with the board at no cost, on forms provided by the board, and shall be subject to the jurisdiction of the board for so long as they participate in the residency rotation. Persons who wish to participate in a second or subsequent temporary residency rotation under this paragraph shall seek advance approval of the board;
 - (c) Graduates of medical or osteopathic schools approved by the board, while engaged in performing supervised internship or first-year postgraduate training approved by the board at hospitals in this state. All first-year postgraduate trainees shall register with the board at no cost, on forms provided by the board. No first-year postgraduate trainee shall violate the provisions of KRS 311.595 or KRS 311.597, and any first-year postgraduate trainee who is released or discharged from a training program for a reason that falls within KRS 311.595 or 311.597 shall be reported by the program director to the board. A residency physician who participates in a temporary residency rotation under paragraph (b) of this subsection shall not be required to obtain a license under KRS 311.530 to 311.620;~~or~~
 - (d) Physicians employed by a sports entity visiting Kentucky for a specific sporting event when the physician holds an active medical or osteopathic license in another state and limits the practice of medicine in Kentucky to medical treatment of the members, coaches, and staff of the sports entity that employs the physician; **or**
 - (e) ***Volunteer health practitioners providing services under Sections 1 to 9 of this Act.***

Section 11. KRS 312.018 is amended to read as follows:

- (1) No person shall engage or attempt to engage in the practice of chiropractic or hold himself out to be a doctor of chiropractic in Kentucky unless licensed in accordance with the provisions of this chapter.
- (2) ***The provisions of subsection (1) of this section shall not apply to volunteer health practitioners providing services under Sections 1 to 9 of this Act.***

Section 12. KRS 313.030 is amended to read as follows:

~~{(1) —}~~ Nothing in this chapter shall ***prohibit***:~~{prevent}~~

- (1) (a) Students from performing dental operations under the supervision of competent instructors within the dental school, college, or department of a university or private practice facility approved by the board. The board may authorize the students of any dental college, school, or department of a university to practice dentistry in any state or municipal institution or public school, or under the board of health, or

in a public clinic or a charitable institution. No fee shall be accepted by the student beyond the expenses provided by the stipend.

~~(b)(2)~~ Students shall be at all times under the direct supervision of a dentist licensed in this state, who is an instructor of the institution at which they are studying.

(2) *Volunteer health practitioners providing services under Sections 1 to 9 of this Act.*

Section 13. KRS 314.101 is amended to read as follows:

(1) This chapter does not prohibit the following:

- (a) The practice of any currently licensed nurse of another state practicing in this state during an emergency occurring in this state or any other state declared by the President of the United States or the Governor of Kentucky. The duration and conditions of the practice shall be determined by the board;
- (b) The practice of nursing which is incidental to the program of study by individuals enrolled in nursing education programs and refresher courses approved by the board or in graduate programs in nursing;
- (c) The practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of his or her official duties;~~or~~
- (d) The practice of any currently licensed nurse of another state who is in this state on a nonroutine basis to:
 - 1. Provide care to a patient being transported into, out of, or through this state;
 - 2. Provide nursing consulting services; or
 - 3. Present a continuing nursing education program; **or**

(e) *Notwithstanding the provisions of paragraph (a) of this subsection, the practice of volunteer health practitioners under Sections 1 to 9 of this Act.*

- (2) Nothing in this chapter shall be construed as prohibiting care of the sick with or without compensation or personal profit when done in connection with the practice of the religious tenets of any recognized or established church by adherents thereof as long as they do not engage in the practice of nursing as defined in this chapter.
- (3) Nothing in this chapter shall limit, preclude, or otherwise restrict the practices of other licensed personnel in carrying out their duties under the terms of their licenses.
- (4) A temporary work permit may be issued by the board to persons who have completed the requirements for, applied for, and paid the fee for licensure by endorsement. Temporary work permits shall be issued only for the length of time required to process applications for endorsement and shall not be renewed. No temporary work permit shall be issued to an applicant who has failed the licensure examination.
- (5) The board may summarily withdraw a temporary work permit upon determination that the person does not meet the requirements for licensure or has disciplinary action pending against the person's license in this or another jurisdiction.

Section 14. KRS 314A.105 is amended to read as follows:

(1) This chapter does not prohibit:

- (a) The performance of respiratory care which is an integral part of the program of study by students enrolled in an accredited program;
- (b) Self-care by the patient nor the gratuitous care by a friend or member of the family who does not represent or hold himself out to be a respiratory care practitioner;
- (c) Respiratory care services provided in the case of an emergency;
- (d) Persons from engaging in cardiopulmonary research;~~and~~
- (e) The performance of respiratory care by trained paramedical personnel; **and**
- (f) *Volunteer health practitioners providing services under Sections 1 to 9 of this Act.***

- (2) Nothing in this section shall limit, preclude, or otherwise restrict the practices of other licensed personnel in carrying out their duties under the terms of their license.

Section 15. KRS 315.020 is amended to read as follows:

- (1) No owner of a pharmacy who is not a pharmacist shall fail to place a pharmacist in charge of his pharmacy or shall permit any person to compound or dispense prescription drugs, medicines, or pharmaceuticals in his place of business except in the presence and under the immediate supervision of a pharmacist.
- (2) No manufacturer of pharmaceuticals who is not a pharmacist shall fail to place a pharmacist in charge of his place of business or shall permit any person to compound prescription drugs, medicines, or pharmaceuticals in his place of business, except as provided by the board through the promulgation of administrative regulations pursuant to KRS Chapter 13A.
- (3) Except as provided in subsection (4) of this section, no person shall engage in the practice of pharmacy unless licensed to practice under the provisions of KRS Chapter 315.
- (4) The provisions of subsection (3) of this section shall not apply to:
 - (a) Pharmacist interns performing professional practice activities under the immediate supervision of a licensed pharmacist. The nature and scope of the activities referred to in this paragraph shall be determined by the board through administrative regulation promulgated pursuant to KRS Chapter 13A;
 - (b) Pharmacist interns and pharmacy technicians performing specifically identified pharmacy practice activities while under the supervision of a pharmacist. The nature and scope of the activities referred to in this paragraph shall be determined by the board through administrative regulation promulgated pursuant to KRS Chapter 13A;~~{or}~~
 - (c) Other licensed health care professionals practicing within the statutory scope of their professional practices; *or*
 - (d) ***Volunteer health practitioners providing services under Sections 1 to 9 of this Act.***

Section 16. KRS 319.005 is amended to read as follows:

- (1) No person shall engage in the practice of psychology as defined in KRS 319.010 or hold himself or herself out by any title or description of services which incorporates the words "psychological," "psychologist," or "psychology", unless licensed by the board. No person shall engage in the practice of psychology in a manner that implies or would reasonably be deemed to imply that he or she is licensed, unless he or she holds a valid license issued by the board.
- (2) ***The provisions of subsection (1) of this section shall not apply to volunteer health practitioners providing services under Sections 1 to 9 of this Act.***

Section 17. KRS 327.020 is amended to read as follows:

- (1) No person shall practice or hold himself out as being able to practice physical therapy in any manner whatsoever unless he meets the educational requirements of this chapter, is licensed in accordance with the provisions of this chapter, he is in good standing with the board and his license is not suspended or revoked. Provided, however, that nothing contained in this chapter shall prohibit any person licensed in this state under any other law from engaging in the practice for which such person is duly licensed. Nothing contained in this chapter shall prohibit routine and restorative services performed by personnel employed by hospitals, physicians or licensed health care facilities as relates to physical therapists. This chapter does not preclude certified occupational therapists, respiratory technicians or respiratory therapists from practicing as defined in the United States Department of Health, Education and Welfare, Public Health Service, Health Resources Administration, Bureau of Health Manpower, DHEW publication No. (HRA) 80-28, "A Report On Allied Health Personnel." Provided further that persons regularly employed by the United States shall be exempted from the provisions of this chapter while engaged in such employment.
- (2) A licensed physical therapist may hold himself out as a "physical therapist" or "licensed physical therapist" and may use the abbreviations "P.T." or "L.P.T." as a part of or immediately following his name, in connection with his profession.
- (3) It shall be unlawful for any person, or for any business entity, its employees, agents or representatives to use in connection with his or its name or business activity the words "physical therapy," "physical therapist,"

"physiotherapy," "physiotherapist," "registered physical therapist," the letters "P.T.," "L.P.T." or any other words, letters, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied or to bill for physical therapy unless such physical therapy is provided by or under the supervision of a physical therapist licensed and practicing in accordance with this chapter.

- (4) ***The provisions of subsection (1) and (3) of this section shall not apply to volunteer health practitioners providing services under Sections 1 to 9 of this Act.***

Section 18. KRS 335.010 is amended to read as follows:

- (1) It is the purpose and policy of the Commonwealth of Kentucky to protect the public from being misled by incompetent and unauthorized persons, and from unprofessional conduct on the part of qualified social workers by providing regulatory authority over persons who hold themselves out to the public as social workers.
- (2) The purpose of KRS 335.010 to 335.160 and KRS 335.990 is to promote high standards of professional performance for those engaged in the profession of social work by regulating the title, and by setting standards of qualification, training, and experience for those who seek to engage in the practice of social work.
- (3) Nothing contained in KRS 335.010 to 335.160 and KRS 335.990 shall be applicable to employees of the State Department of Education or local boards of education who meet the certification requirements in the area of social work as established, or which may be established, by the Kentucky Board of Education. Nor shall anything in KRS 335.010 to 335.160 and KRS 335.990 be construed to apply to, limit, or restrict the regulation of the title, setting of standards, qualifications, training, or experience of those who seek to engage in the practice of social work and who have been, or will be, certified by the Kentucky Board of Education for the position for which they have been employed.
- (4) Nothing contained in KRS 335.010 to 335.160 and KRS 335.990 shall require persons employed by the Commonwealth of Kentucky, the director or administrative head of a social service agency or division of a city, county or urban-county government, or applicants for such employment to be licensed.
- (5) Nothing contained in KRS 335.010 to 335.160 and KRS 335.990 shall require persons employed by church-related or church-operated or affiliated agencies, children's homes, neighborhood centers, or other philanthropic and nonprofit field service offices to be licensed. The provisions of KRS 335.010 to 335.160 and KRS 335.990 shall not be construed to apply to, limit, or restrict the regulation of the title, setting of standards, qualifications, training, and experience of those engaged as employees of such entities in the practice of social work or applied social counseling.
- (6) ***Nothing contained in KRS 335.010 to 335.160 and 335.990 shall prohibit volunteer health practitioners from providing services under Sections 1 to 9 of this Act.***

Section 19. KRS 321.200 is amended to read as follows:

- (1) No provision of this chapter shall be construed to prohibit any of the following:
 - (a) Any persons from gratuitously treating animals in cases of emergency if they do not represent themselves to be veterinarians or use any title or degree pertaining to veterinary practice;
 - (b) The owner of any animal or animals and the owner's full-time, or part-time, regular employees from caring for and treating, including administering drugs to, any animals belonging to the owner. Transfer of ownership or a temporary contract shall not be used for the purpose of circumventing this provision;
 - (c) Any person from castrating food animals and dehorning cattle, as long as any drugs or medications are obtained and used in accordance with applicable federal statutes and regulations governing controlled and legend drugs.
 - (d) Any student enrolled in any approved veterinary school or college from working under the direct supervision of a veterinarian who is duly licensed under the laws of this Commonwealth and whose compensation is paid solely by the licensed veterinarian;
 - (e) Nonlicensed graduate veterinarians in the United States Armed Services or employees of the Animal and Plant Health Inspection Service of the United States Department of Agriculture or the Kentucky Department of Agriculture, Division of Animal Health while engaged in the performance of their official duties, or other lawfully qualified veterinarians residing in other states, from meeting licensed veterinarians of this Commonwealth in consultation;

- (f) A trainer, sales agent, or herdsman from caring for animals, provided there is a veterinary-client-patient relationship, as defined in KRS 321.185;
- (g) A university faculty member from teaching veterinary science or related courses, or a faculty member or staff member from engaging in veterinary research, including drug and drug testing research, provided that research is conducted in accordance with applicable federal statutes and regulations governing controlled and legend drugs;~~or~~
- (h) Any person who holds a postgraduate degree in reproductive physiology or a related field, and who has performed embryo transfers in Kentucky during the five (5) years immediately preceding July 14, 1992, from performing embryo transfers; *or*
- (i) ***Volunteer health practitioners providing services under Sections 1 to 9 of this Act.***

- (2) Nothing in this chapter shall interfere with the professional activities of any licensed pharmacist.

Section 20. KRS 321.441 is amended to read as follows:

- (1) An applicant for registration as a veterinary technologist shall be a graduate of an accredited program of veterinary technology approved by the board and have met all the requirements of the board. An applicant for registration as a veterinary technician shall possess an associate degree related to veterinary sciences, or its equivalent, approved by the board and have met all the requirements of the board. An applicant for registration as a veterinary technologist or veterinary technician shall pass a written and practical examination as determined by the board to assess the qualifications and fitness of an applicant to engage in the practice.
- (2) Registration issued to a veterinary technologist or veterinary technician shall not be active until the veterinary technologist or veterinary technician is employed and is under the direct supervision of a veterinarian licensed in this Commonwealth. A veterinary technologist or veterinary technician's registration is considered to be inactive until registration is activated by returning a renewal application signed by the supervising veterinarian and the application is approved by the board. Each veterinary technologist or veterinary technician registered by the board shall pay an annual fee as prescribed by the board. Each veterinary technologist or veterinary technician registered by the board shall attend annual continuing education hours as required by the board to renew the registration. Failure to renew shall result in the termination of registration. If a hearing is requested upon the rejection of an application, or upon the termination of registration, a hearing shall be conducted in accordance with the provision of KRS 321.360.
- (3) The services of a veterinary technologist or veterinary technician shall be limited to the performance of duties under the direct supervision of a licensed veterinarian except for the routine administration of drugs, vaccines, parasite control agents, and growth stimulating implants for food animals prescribed by a veterinarian and under the indirect supervision of a veterinarian where a veterinarian-client-patient relationship exists. A veterinary technologist or veterinary technician shall receive no fee or compensation for services other than salary or compensation paid by the establishment by which the veterinary technologist or veterinary technician is employed. A veterinary technologist or veterinary technician shall not participate in the operation of a branch office, clinic, or allied establishment unless a licensed veterinarian is on the premises. A veterinary technologist or veterinary technician shall not diagnose, prescribe medication or treatment, or perform surgical procedures other than castrating and dehorning of food animals. A veterinary technologist or veterinary technician may assist a veterinarian in all duties of veterinary medicine and surgery.
- (4) A veterinarian shall utilize the services of a veterinary technologist or veterinary technician in accordance with the terms and provisions of this chapter. Unauthorized utilization of veterinary technologist or veterinary technicians by veterinarians shall be considered as aiding and abetting any unlicensed person to practice veterinary medicine as described in KRS 321.351.
- (5) ***Nothing in this section shall prohibit volunteer health practitioners from providing services under Sections 1 to 9 of this Act.***

Approved March 23, 2007.

CHAPTER 97**(HB 120)**

AN ACT relating to farmers markets and declaring an emergency.

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

Section 1. KRS 217.015 is amended to read as follows:

For the purposes of KRS 217.005 to 217.215:

- (1) "Advertisement" means all representations, disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;
- (2) "Bread" and "enriched bread" mean only the foods commonly known and described as white bread, white rolls, white buns, enriched white bread, enriched rolls, and enriched white buns, as defined under the federal act. For the purposes of KRS 217.136 and 217.137, "bread" or "enriched bread" also means breads that may include vegetables or fruit as an ingredient;
- (3) "Cabinet" means the Cabinet for Health and Family Services or its designee;
- (4) "Color" means but is not limited to black, white, and intermediate grays;
- (5) "Color additive" means a material that:
 - (a) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source. Nothing in this paragraph shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest; or
 - (b) When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with another substance, of imparting color. "Color additive" does not include any material that has been or may in the future be exempted under the federal act;
- (6) "Contaminated with filth" means any food, drug, device, or cosmetic that is not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminants;
- (7) "Cosmetic" means:
 - (a) Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and
 - (b) Articles intended for use as a component of those articles, except that the term shall not include soap;
- (8) "Device," except when used in subsection (48) of this section, KRS 217.035(6), KRS 217.065(3), KRS 217.095(3), and KRS 217.175(10), means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:
 - (a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or
 - (b) To affect the structure or any function of the body of man or other animals;
- (9) "Dispense" means to deliver a drug or device to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
- (10) "Dispenser" means a person who lawfully dispenses a drug or device to or for the use of an ultimate user;
- (11) "Drug" means:
 - (a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

- (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;
 - (c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and
 - (d) Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;
- (12) "Enriched," as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of enriched flour as defined under the federal act;
- (13) "Environmental Pesticide Control Act of 1972" means the Federal Environmental Pesticide Control Act of 1972, Pub. L. 92-516, and all amendments thereto;
- (14) "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. secs. 1451 et seq., and all amendments thereto;
- (15) "Federal act" means the Federal Food, Drug and Cosmetic Act, 21 U.S.C. secs. 301 et seq., 52 Stat. 1040 et seq., or amendments thereto;
- (16) "Filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition does not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending, or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;
- (17) "Flour" means only the foods commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;
- (18) "Food" means:
- (a) Articles used for food or drink for man or other animals;
 - (b) Chewing gum; and
 - (c) Articles used for components of any such article;
- (19) "Food additive" means any substance the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any of these uses, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use; except that the term does not include:
- (a) A pesticide chemical in or on a raw agricultural commodity;
 - (b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;
 - (c) A color additive; or

- (d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. secs. 451 et seq.; or the Meat Inspection Act of 1907; and amendments thereto;
- (20) "Food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but does not include retail food establishments, home-based processors, or home-based microprocessors;
- (21) "Food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments; private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; charitable food kitchens; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It does not include food vending machines, establishments serving beverages only in single service or original containers, or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;
- (22) "Food storage warehouse" means any establishment in which food is stored for subsequent distribution;
- (23) "Immediate container" does not include package liners;
- (24) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent illness or injury based on:
 - (a) The number of potential illnesses or injuries; or
 - (b) The nature, severity, and duration of the anticipated illness or injury;
- (25) "Interference" means threatening or otherwise preventing the performance of lawful inspections or duties by agents of the cabinet during all reasonable times of operation;
- (26) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;
- (27) "Labeling" means all labels and other written, printed, or graphic matter:
 - (a) Upon an article or any of its containers or wrappers; or
 - (b) Accompanying the article;
- (28) "Legend drug" means a drug defined by the Federal Food, Drug and Cosmetic Act, as amended, and under which definition its label is required to bear the statement "Caution: Federal law prohibits dispensing without prescription.";
- (29) "Meat Inspection Act" means the Federal Meat Inspection Act, 21 U.S.C. secs. 71 et seq., 34 Stat. 1260 et seq., including any amendments thereto;
- (30) "New drug" means:
 - (a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or
 - (b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under prescribed conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;
- (31) "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;
- (32) "Person" means an individual, firm, partnership, company, corporation, trustee, association, or any public or private entity;

- (33) "Pesticide chemical" means any substance that alone in chemical combination, or in formulation with one or more other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act and amendments thereto, and that is used in the production, storage, or transportation of raw agricultural commodities;
- (34) "Poultry Products Inspection Act" means the Federal Poultry and Poultry Products Inspection Act, 21 U.S.C. secs. 451 et seq., Pub. L. 85-172, 71 Stat. 441, and any amendments thereto;
- (35) "Practitioner" means medical or osteopathic physicians, dentists, chiroprodists, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices. "Practitioner" includes optometrists when administering or prescribing pharmaceutical agents authorized in KRS 320.240(12) to (14), advanced registered nurse practitioners as authorized in KRS 314.011 and 314.042, physician assistants when administering or prescribing pharmaceutical agents as authorized in KRS 311.858, and health care professionals who are residents of and actively practicing in a state other than Kentucky and who are licensed and have prescriptive authority under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;
- (36) "Prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, that is signed, given, or authorized by a medical, dental, chiroprody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (37) "Prescription blank" means a document that conforms with KRS 217.216 and is intended for prescribing a drug to an ultimate user;
- (38) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;
- (39) "Retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;
- (40) "Retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but does not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries, or food processing establishments;
- (41) "Salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;
- (42) "Salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, recoopering, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;
- (43) "Second or subsequent offense" has the same meaning as it does in KRS 218A.010;
- (44) "Secretary" means the secretary of the Cabinet for Health and Family Services;
- (45) "Temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;
- (46) "Traffic" has the same meaning as it does in KRS 218A.010;
- (47) "Ultimate user" has the same meaning as it does in KRS 218A.010;
- (48) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement,

word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts that are material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;

- (49) The representation of a drug in its labeling or advertisement as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;
- (50) The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of those articles for sale, the sale, dispensing, and giving of those articles, and the supplying or applying of those articles in the conduct of any food, drug, or cosmetic establishment;
- (51) "Home" means a primary residence occupied by the processor, that contains only two (2) ranges, ovens, or double-ovens, and no more than three (3) refrigerators used for cold storage. This equipment shall have been designed for home use and not for commercial use, and shall be operated in the kitchen within the residence;
- (52) "Formulated acid food product" means an acid food in which the addition of a small amount of low-acid food results in a finished equilibrium pH of 4.6 or below that does not significantly differ from that of the predominant acid or acid food;
- (53) "Acidified food product" means a low-acid food to which acid or acidic food is added and which has a water activity value greater than 0.85, and a finished equilibrium pH of 4.6 or below;
- (54) "Low-acid food" means foods, other than alcoholic beverages, with a finished equilibrium pH greater than 4.6, and a water activity value greater than 0.85;
- (55) "Acid food" means foods that have a natural pH of 4.6 or below;
- (56) "Home-based processor" means a farmer who, in the farmer's home, produces or processes whole fruit and vegetables, mixed-greens, jams, jellies, sweet sorghum syrup, preserves, fruit butter, bread, fruit pies, cakes, or cookies;
- (57) "Home-based microprocessor" means a farmer who, in the farmer's home or certified or permitted kitchen, produces or processes acid foods, formulated acid food products, acidified food products, or low-acid canned foods, and who has a net income of less than thirty-five thousand dollars (\$35,000) annually from the sale of the product;
- (58) "Certified" means any person or home-based microprocessor who:
 - (a) Has attended the Kentucky Cooperative Extension Service's microprocessing program or pilot microprocessing program and has been identified by the Kentucky Cooperative Extension Service as having satisfactorily completed the prescribed course of instruction; or
 - (b) Has attended some other school pursuant to 21 C.F.R. sec. 114.10;~~and~~
- (59) "Farmer" means a person who is a resident of Kentucky and owns or rents agricultural land pursuant to subsection (9) of KRS 132.010 or horticultural land pursuant to subsection (10) of KRS 132.010. For the purposes of KRS 217.136 to 217.139, "farmer" also means any person who is a resident of Kentucky and has grown the primary horticultural and agronomic ingredients used in the home-based processed products which they have produced; *and*
- (60) ***"Farmers market temporary food service establishment" means any temporary food service establishment operated by a farmer who is a member of the market which operates within the confines of a farmers market registered with the Kentucky Department of Agriculture for the direct-to-consumer marketing of Kentucky grown farm products from approved sources for a period of time not to exceed two (2) days per week for any consecutive six (6) months period in a calendar year.***

Section 2. KRS 217.125 is amended to read as follows:

- (1) The authority to promulgate regulations for the efficient administration and enforcement of KRS 217.005 to 217.215 is hereby vested in the secretary. The secretary may make the regulations promulgated under KRS 217.005 to 217.215 consistent with those promulgated under the federal act and the Fair Packaging and

Labeling Act. Regulations promulgated may require permits to operate and include provisions for regulating the issuance, suspension, and reinstatement of permits. The authority to promulgate regulations pursuant to KRS 217.005 to 217.205 is restricted to the Cabinet for Health and Family Services.

- (2) No person shall operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant without having obtained an annual permit to operate from the cabinet. An application for the permit to operate shall be made to the cabinet upon forms provided by it and shall be accompanied by the required fee as shall be provided by regulation. The secretary shall establish a fee schedule according to authorization in the state budget document. Fees collected by the cabinet shall be deposited in the State Treasury and credited to a revolving fund account for use by the cabinet in carrying out the provisions of KRS 217.025 to 217.390 and the regulations adopted by the secretary pursuant thereto. The balance of the account shall lapse to the general fund at the end of each biennium.
- (3) No person shall operate a retail food establishment without having obtained a permit to operate from the cabinet. An application for a permit to operate any retail food establishment shall be made to the cabinet upon forms provided by it and shall contain the information the cabinet may reasonably require.
- (4) Except as otherwise provided in subsection (11)~~((6))~~ of this section, each application for a temporary food service establishment or for an annual permit to operate a retail food establishment shall be accompanied by the required fee. The secretary shall establish a fee schedule according to authorization in the state budget document.
- (5) *Except as otherwise provided in subsection (11) of this section, each application for a farmers market temporary food service establishment shall be accompanied by the required fee of at least fifty dollars (\$50). The secretary shall establish a fee schedule by promulgation of administrative regulation. Fees collected by the cabinet shall be used to carry out duties related to farmers market temporary food service establishments including but not limited to inspections and the issuance of permits.*
- (6) *An applicant for a permit to operate a farmers market temporary food service establishment must provide documentation of successful completion of a food safety training program offered by either the state, a local health department, or other entity approved by the cabinet to conduct food safety training. Each certification of food safety training shall expire after a period of twenty-four (24) months from the date of issuance. Permits issued shall be posted in a conspicuous place in the establishment, and a person who has completed the food safety training for farmers market temporary food service establishments shall be present at all times during the operation of the establishment.*
- (7) *Upon expiration of a temporary food service establishment permit, any subsequent permits shall not be issued to the same operator to operate at the same location until a period of thirty (30) days has elapsed.*
- (8) Upon receipt of an application for a permit to operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant or a retail food establishment accompanied by the required fee, the cabinet shall issue a permit if the establishment meets the requirements of KRS 217.005 to 217.215 and regulations adopted by the cabinet. Retail food establishments holding a valid and effective permit on January 1, 1973, even though not fully meeting the construction requirements of KRS 217.005 to 217.215 and the regulations adopted pursuant thereto, may continue to be eligible for permit renewal if in good repair and capable of being maintained in a safe and sanitary manner.
- (9) *Permits shall not be issued to operate a temporary food service establishment and a farmers market temporary food service establishment simultaneously at the same location and by the same operator.*
- (10) *In all instances of permit issuance for either a temporary food service establishment permit or a farmers market temporary food service establishment permit, any subsequent permits shall not be issued until a period of thirty (30) days has elapsed.*
- (11)~~((6))~~ Private, parochial, and public school cafeterias or lunchroom facilities through the twelfth grade, charitable food kitchens, and all facilities operated by the Cabinet for Health and Family Services or Department of Corrections shall be exempt from the payment of fees, but shall comply with all other provisions of KRS 217.005 to 217.215 and the state retail food establishment code. For this subsection, the term "charitable food kitchens" means a not-for-profit, benevolent food service establishment where more than one-half (1/2) of the employees are volunteers.

~~(12)(7)~~ Each annual permit to operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant or a retail food establishment, unless previously suspended or revoked, shall expire on December 31 following its date of issuance, and be renewable annually upon application accompanied by the required fee, except as otherwise provided in subsection ~~(11)(6)~~ of this section, and if the establishment is in compliance with KRS 217.005 to 217.215 and regulations of the cabinet.

~~(13)(8)~~ Each permit to operate a food processing establishment, food storage warehouse, salvage distributor, salvage processing plant, or a retail food establishment shall be issued only for the premises and person named in the application and shall not be transferable. Permits issued shall be posted in a conspicuous place in the establishment.

Section 3. Whereas it is important to assist farm families and communities in the pursuit of their livelihood, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved March 23, 2007.

CHAPTER 98

(HB 177)

AN ACT changing the classification of the City of Crestview Hills, in Kenton County.

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

NOW, THEREFORE,

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

Section 1. The City of Crestview Hills, in Kenton County, is transferred from the fifth to the fourth class of cities.

Approved March 23, 2007.

CHAPTER 99

(HB 138)

AN ACT relating to alcoholic beverages.

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

Section 1. KRS 241.010 is amended to read as follows:

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

- (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced.
- (2) "Alcoholic beverage" means every liquid or solid, whether patented or not, containing alcohol in an amount in excess of more than one percent (1%) of alcohol by volume, which is fit for beverage purposes. It includes every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing any alcohol or not. It does not include the following products:
 - (a) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy;
 - (b) Patented, patent, and proprietary medicines;
 - (c) Toilet, medicinal, and antiseptic preparations and solutions;
 - (d) Flavoring extracts and syrups;
 - (e) Denatured alcohol or denatured rum;
 - (f) Vinegar and preserved sweet cider;

- (g) Wine for sacramental purposes;
 - (h) Alcohol unfit for beverage purposes that is to be sold for legitimate external use; and
 - (i) Malt beverages, containing not more than three and two-tenths percent (3.2%) of alcohol by weight, in territory that has voted to allow the sale thereof.
- (3) "Board" means the State Alcoholic Beverage Control Board created by KRS 241.030.
 - (4) "Bottle" means any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail.
 - (5) "Brewer" means any person who manufactures malt beverages or owns, occupies, carries on, works, or conducts any brewery, either by himself or by his agent.
 - (6) "Brewery" means any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or where any of the products of brewing or fermentation are stored or kept.
 - (7) "Building containing licensed premises" means the licensed premises themselves and includes the land, tract of land, or parking lot in which the premises are contained, and any part of any building connected by direct access or by an entrance which is under the ownership or control of the licensee by lease holdings or ownership.
 - (8) "Caterer" means a corporation, partnership, or individual that operates the business of a food service professional by preparing food in a licensed and inspected commissary, transporting the food and alcoholic beverages to the caterer's designated and inspected banquet hall or to a location selected by the customer, and serving the food and alcoholic beverages to the customer's guests.
 - (9) "Charitable organization" means a nonprofit entity recognized as exempt from federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. sec. 501(c)) or any organization having been established and continuously operating within the Commonwealth of Kentucky for charitable purposes for three (3) years and which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational, literary, civic, fraternal, or patriotic purposes.
 - (10) "Cider" means any fermented fruit-based beverage containing more than one-tenth of one percent (0.1%) alcohol by volume and includes hard cider and perry cider.
 - (11) "City administrator" means city alcoholic beverage control administrator.
 - (12) "Commissioner" means the commissioner of the Kentucky Department of Revenue.
 - (13) "Convention center" means any facility which, in its usual and customary business, provides seating for a minimum of one thousand (1,000) people and offers convention facilities and related services for seminars, training and educational purposes, trade association meetings, conventions, or civic and community events or for plays, theatrical productions, or cultural exhibitions.
 - (14) "Convicted" and "conviction" means a finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment.
 - (15) "County administrator" means county alcoholic beverage control administrator.
 - (16) "Distilled spirits" or "spirits" means any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine, hard cider, and malt beverages.
 - (17) "Distiller" means any person who is engaged in the business of manufacturing distilled spirits at any distillery in the state and is registered in the Office of the Collector of Internal Revenue for the United States at Louisville, Kentucky.
 - (18) "Distillery" means any place or premises where distilled spirits are manufactured for sale, and which are registered in the office of any collector of internal revenue for the United States. It includes any United States government bonded warehouse.

- (19) "Distributor" means any person who distributes malt beverages for the purpose of being sold at retail.
- (20) "Dry territory" means a county, city, district, or precinct in which a majority of voters have voted in favor of prohibition.
- (21) "Election" means:
 - (a) An election held for the purpose of taking the sense of the people as to the application or discontinuance of alcoholic beverage sales under KRS Chapter 242; or
 - (b) Any other election not pertaining to alcohol.
- (22) "Executive director" means the executive director of the Office of Alcoholic Beverage Control.
- (23) "Field representative" means any employee or agent of the office who is regularly employed and whose primary function is to travel from place to place for the purpose of visiting taxpayers, and any employee or agent of the office who is assigned, temporarily or permanently, by the executive director to duty outside the main office of the office at Frankfort, in connection with the administration of alcoholic beverage statutes.
- (24) "License" means any license issued pursuant to KRS 243.020 to 243.670.
- (25) "Licensee" means any person to whom a license has been issued, pursuant to KRS 243.020 to 243.670.
- (26) "Limited restaurant" means:
 - (a) A facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross income from the sale of food, which maintains a minimum seating capacity of one hundred (100) persons for dining, and which is located in a territory where prohibition is no longer in effect under KRS 242.185(6); **or**
 - (b) ***A facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross income from the sale of food, which maintains a minimum seating capacity of fifty (50) persons for dining, which has no open bar, which requires that alcoholic beverages be sold in conjunction with the sale of a meal, and which is located in a territory where prohibition is no longer in effect under Section 8 of this Act.***
- (27) "Malt beverage" means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and having an alcoholic content greater than that permitted under subsection (2)(i) of this section.
- (28) "Manufacture" means distill, rectify, brew, bottle, and operate a winery.
- (29) "Manufacturer" means a vintner, distiller, rectifier, or brewer, and any other person engaged in the production or bottling of alcoholic beverages.
- (30) "Minor" means any person who is not twenty-one (21) years of age or older.
- (31) "Office" means the Office of Alcoholic Beverage Control.
- (32) "Premises" means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. "Premises" shall not include as a single unit two (2) or more separate businesses of one (1) owner on the same lot or tract of land, in the same or in different buildings if physical and permanent separation of the premises is maintained, excluding employee access by keyed entry and emergency exits equipped with crash bars, and each has a separate public entrance accessible directly from the sidewalk or parking lot. Any licensee holding an alcoholic beverage license on July 15, 1998 shall not, by reason of this subsection, be ineligible to continue to hold his or her license or obtain a renewal, of the license.
- (33) "Prohibition" means the application of KRS 242.190 to 242.430 to a territory.
- (34) ***"Qualified historic site" means a contributing property with dining facilities for at least fifty (50) persons and lodging on the premises as authorized by KRS 219.021 within a commercial district listed in the National Register of Historic Places, or a site that is listed as a National Historic Landmark with dining facilities for at least fifty (50) persons and lodging on the premises as authorized by KRS 219.021. Notwithstanding the provisions of this subsection, a distillery which is listed as a National Historic Landmark and which has a souvenir retail liquor license under KRS 243.0305, shall be deemed a "qualified historic site" under this section.***

- (35) "Rectifier" means any person who rectifies, purifies, or refines distilled spirits or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying, or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters, or any other name.
- (36)~~(35)~~ "Repackaging" means the placing of alcoholic beverages in any retail container irrespective of the material from which the container is made.
- (37)~~(36)~~ "Restaurant" means a facility where the usual and customary business is the serving of meals to consumers, that has a bona fide kitchen facility, and that receives at least fifty percent (50%) of its gross receipts from the sale of food.
- (38)~~(37)~~ "Retail container" means any bottle, can, barrel, or other container which, without a separable intermediate container, holds alcoholic beverages and is suitable and destined for sale to a retail outlet, whether it is suitable for delivery to the consumer or not.
- (39)~~(38)~~ "Retail outlet" means retailer, hotel, motel, restaurant, railroad dining car, club, and any facility where alcoholic beverages are sold directly to the consumers.
- (40)~~(39)~~ "Retail sale" means any sale where delivery is made in Kentucky to any consumers.
- (41)~~(40)~~ "Retailer" means any person who sells at retail any alcoholic beverage for the sale of which a license is required.
- (42)~~(41)~~ "Sale" means any transfer, exchange, or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant, or employee, of any alcoholic beverage.
- (43)~~(42)~~ "Service bar" means a bar, counter, shelving, or similar structure used for storing or stocking supplies of alcoholic beverages that is a workstation where employees prepare alcoholic beverage drinks to be delivered to customers away from the service bar. A service bar shall be located in an area where the general public, guests, or patrons are prohibited.
- (44)~~(43)~~ "Sell" includes solicit or receive an order for, keep or expose for sale, keep with intent to sell, and the delivery of any alcoholic beverage.
- (45)~~(44)~~ "Small farm winery" means a winery producing wines, in an amount not to exceed fifty thousand (50,000) gallons in a calendar year.
- (46)~~(45)~~ "Souvenir package" means a special package of Kentucky straight bourbon whiskey available for retail sale at a licensed Kentucky distillery where the whiskey was produced or bottled that is available from a licensed retailer.
- (47)~~(46)~~ "State director" means the director of the Division of Distilled Spirits or the director of the Division of Malt Beverages, or both, as the context requires.
- (48)~~(47)~~ "Supplemental bar" means a bar, counter, shelving, or similar structure used for serving and selling distilled spirits or wine by the drink for consumption on the licensed premises to guests and patrons from additional locations other than the main bar. A supplemental bar shall be continuously constructed and accessible to patrons for distilled spirits or wine sales or service without physical separation by walls, doors, or similar structures.
- (49)~~(48)~~ "Vehicle" means any device or animal used to carry, convey, transport, or otherwise move alcoholic beverages or any products, equipment, or appurtenances used to manufacture, bottle, or sell these beverages.
- (50)~~(49)~~ "Vintner" means any person who owns, occupies, carries on, works, conducts, or operates any winery, either by himself or by his agent, except persons who manufacture wine for sacramental purposes exclusively.
- (51)~~(50)~~ "Warehouse" means any place in which alcoholic beverages are housed or stored.
- (52)~~(51)~~ "Wholesale sale" means a sale to any person for the purpose of resale.
- (53)~~(52)~~ "Wholesaler" means any person who distributes alcoholic beverages for the purpose of being sold at retail, but it shall not include a subsidiary of a manufacturer or cooperative of a retail outlet.

~~(54)~~~~(53)~~ "Wine" means the product of the normal alcoholic fermentation of the juices of fruits, with the usual processes of manufacture and normal additions, and includes champagne and sparkling and fortified wine of an alcoholic content not to exceed twenty-four percent (24%) by volume. It includes cider, hard cider, and perry cider and also includes preparations or mixtures vended in retail containers if these preparations or mixtures contain not more than fifteen percent (15%) of alcohol by volume. It includes ciders, perry, or sake having an alcohol content greater than that permitted under subsection (2)(i) of this section.

~~(55)~~~~(54)~~ "Winery" means any place or premises in which wine is manufactured from any fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are compounded.

SECTION 2. A NEW SECTION OF KRS CHAPTER 242 IS CREATED TO READ AS FOLLOWS:

- (1) *To promote economic development and tourism in any county or city in which prohibition is in effect, in whole or in part, and a qualified historic site is located, a local option election for the limited sales of alcoholic beverages by the drink may be held in the precinct of the county where the qualified historic site is located, notwithstanding any other provision of the Kentucky Revised Statutes.*
- (2) *A local option election for the limited sale of alcoholic beverages by the drink held under subsection (1) of this section shall be conducted in the same manner as specified in KRS 242.020; 242.030(1), (2), and (5); 242.040; and 242.060 to 242.120. The form of the proposition to be voted upon shall be, "Are you in favor of the sale of alcoholic beverages by the drink at qualified historic sites in the (name of precinct)?"*
- (3) *Upon approval of the proposition, the Office of Alcoholic Beverage Control shall issue a license to qualified historic sites that meet the criteria included in the proposition for the sale of alcoholic beverages by the drink as provided in KRS 243.030.*

Section 3. KRS 243.030 is amended to read as follows:

The following kinds of distilled spirits and wine licenses may be issued by the director of the Division of Distilled Spirits, the fees for which shall be:

- (1) Distiller's license, per annum \$2,500.00
- (2) Rectifier's license, per annum \$2,500.00
- (3) Blender's license, per annum \$2,500.00
- (4) Vintner's license, per annum \$1,000.00
- (5) Small farm winery license, per annum \$100.00
 - (a) Small farm winery off-premises retail license, per annum \$25.00
- (6) Wholesaler's license, per annum \$2,000.00
- (7) Retail package license, per annum:
 - (a) In counties containing cities of the first class or a consolidated local government \$800.00
 - (b) In counties containing cities of the second class \$700.00
 - (c) In counties containing cities of the third class \$600.00
 - (d) In counties containing cities of the fourth class \$500.00
 - (e) In all other counties \$400.00
- (8) Retail drink license, motel drink license, restaurant drink license, or supplemental bar license, per annum:
 - (a) In counties containing cities of the first class or a consolidated local government \$1,000.00
 - (b) In counties containing cities of the second class \$700.00
 - (c) In counties containing cities of the third class \$600.00
 - (d) In counties containing cities of the fourth class \$500.00
 - (e) The fee for each of the first five (5) supplemental bar licenses shall be the same as the fee for the drink license. There shall be no charge for each supplemental license issued in excess of five (5) to the same licensee at the same premises.

- (9) Transporter's license, per annum \$100.00
- (10) Dining car license, per annum \$100.00
- (11) Special nonbeverage alcohol vendor's license, per annum \$50.00
- (12) Special industrial alcohol license, per annum \$50.00
- (13) Special nonindustrial alcohol license, per annum \$50.00
- (14) Special agent's or solicitor's license, per annum \$25.00
- (15) Special storage or warehouse license and bottling house storage license,
per annum \$500.00
- (16) Special temporary liquor license, per event \$100.00
- (17) Special private club license, per annum \$300.00

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

- (18) Special Sunday retail drink license, per annum \$500.00
- (19) Nonresident special agent or solicitor's license, per annum \$100.00
- (20) Transport permit, nonresident license, per annum \$100.00
- (21) Through transporter's license, per annum \$100.00
- (22) Freight forwarder's license, per annum \$100.00
- (23) Restaurant wine license, per annum..... \$500.00
- (24) Special temporary wine license, per event \$50.00
- (25) Caterer's license, per annum \$800.00
- (26) Souvenir retail liquor license, per annum \$500.00
- (27) Special temporary distilled spirits and wine
auction license, per event \$100.00
- (28) Airport drink license, per annum \$1,000.00
- (29) Convention center or convention hotel complex
license, per annum \$5,000.00
- (30) Extended hours supplemental license, per annum \$2,000.00
- (31) Horse race track license, per annum \$2,000.00
- (32) Automobile race track license, per annum \$2,000.00
- (33) Air or rail system license, per annum \$2,000.00
- (34) Riverboat license, per annum \$1,000.00
- (35) Bottling house license, per annum \$1,000.00
- (36) Hotel in-room license, per annum \$200.00
- (37) Bonded warehouse license, per annum \$1,000.00
- (38) Air transporter liquor license, per annum \$500.00
- (39) Sampling license, per annum \$100.00
- (40) Replacement or duplicate license \$25.00

- (41) Entertainment destination license, per annum \$7,500.00
- (42) (a) Limited restaurant license or limited golf course license, per annum
(includes distilled spirits, wine, and malt beverages), new applicants:
1. In counties containing cities of the first class or a consolidated local government \$1,200.00
 2. In counties containing cities of the second class \$900.00
 3. In counties containing cities of the third class \$800.00
 4. In counties containing cities of the fourth, fifth, or sixth classes \$700.00
- (b) Renewals for limited restaurant licenses or limited golf course licenses shall be \$50.00 less than the applicable licensing fee for new applicants.
- (43) Small farm winery wholesaler's license, per annum \$100.00
- (44) ***Qualified historic site license (includes distilled spirits, wine, and malt beverages by the drink), per annum.....\$1,000.00***
- (45) A nonrefundable fee of fifty dollars (\$50) shall be charged to process each new transitional license pursuant to KRS 243.045.
- ~~(46)~~~~(45)}~~ Other special licenses the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine and provides for by administrative regulation. In fixing the amount of license taxes that are required to be fixed by the board, it shall have regard for the value of the privilege granted.

A nonrefundable application fee of fifty dollars (\$50) shall be charged to process each new application under this section, except for subsections (5), (9), (11), (12), (13), (14), (16), (19), (20), (21), (22), (24), (27), (39), and (40). The application fee shall be applied to the licensing fee if the license is issued; otherwise it shall be retained by the office.

Section 4. KRS 243.040 is amended to read as follows:

The following kinds of malt beverage licenses may be issued by the director of the Division of Malt Beverages, the fees for which shall be:

- (1) Brewer's license, per annum \$2,500.00
- (2) Microbrewery license, per annum \$500.00
- (3) Distributor's license, per annum \$500.00
- (4) Malt beverage retail license, per annum:
 - (a) New applicants \$200.00
 - (b) Renewals \$150.00
- (5) Dining car license, per annum \$200.00
- (6) Transporter's license, per annum \$100.00
- (7) Special temporary license, per event \$50.00
- (8) Special off-premises retail storage license, per annum \$100.00
- (9) Distributor's storage, per annum \$250.00
- (10) Special beer transporter's license, per annum \$100.00
- (11) Brew-on-premises license, per annum \$500.00
- (12) Out-of-state brewer license, per annum \$1,500.00
- (13) Malt beverage warehouse license, per annum \$1,000.00
- (14) Replacement or duplicate license, per annum \$25.00
- (15) Limited out-of-state brewer license, per annum \$250.00

- (16) *Qualified historic site, per annum*.....\$200.00
- (17) A nonrefundable fee of fifty dollars (\$50) shall be charged to process each new transitional license pursuant to KRS 243.045.
- ~~(18)~~~~(17)~~ Other special licenses as the state board finds to be necessary for the administration of KRS Chapters 241, 242, 243, and 244 and for the proper regulation and control of the trafficking in malt beverages, as provided for by administrative regulations promulgated by the state board.

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

SECTION 5. A NEW SECTION OF KRS CHAPTER 243 IS CREATED TO READ AS FOLLOWS:

- (1) *A qualified historic site license shall authorize the licensee to:*
- (a) *Sell distilled spirits, wine, and malt beverages by the drink at one (1) or more permanent or nonpermanent locations on the premises over which the licensee, by lease or ownership, has exclusive control without obtaining additional supplemental bar licenses prescribed by KRS 243.037 and 244.330;*
 - (b) *Sell distilled spirits, wine, and malt beverages by the drink to patrons at public or private functions held on the premises; and*
 - (c) *Purchase and store alcoholic beverages in the manner prescribed in KRS 243.250, 243.280, and 244.310.*
- (2) *Nothing in this section exempts the holder of a qualified historic site license from the provisions of KRS Chapters 241, 242, 243, and 244, or from any rules of the board as established by administrative regulations, except as expressly stated in this section.*

Section 6. KRS 243.050 is amended to read as follows:

- (1) The office may issue a railroad system license to a railroad company upon the payment of the required fee. This license tax shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages.
- (2) The office may issue a commercial airlines system license to a commercial airlines system or charter flight system upon the payment of the required fee. This license fee shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages and the license may be renewed annually. The license shall authorize the licensee to sell distilled spirits and wine by the drink and by miniature bottle, and malt beverages, upon regularly scheduled or charter flights of the licensee, in and out of the State of Kentucky. The license shall authorize the licensee to store alcoholic beverages for retail sale at a location or locations, if operating from more than one (1) airport in Kentucky, as designated on the license application.
- (3) The office may issue a transporter's license to a commercial airline system, a charter flight system, or a commercial cargo system, upon the payment of the required fee. This license may be renewed annually. The license shall authorize the licensee to transport distilled spirits and wine and malt beverages, into and out of the State of Kentucky, upon regularly scheduled or charter flights of the licensee. The license shall authorize, for the purpose of transportation, the storage of alcoholic beverages at a location or locations, if operating from more than one (1) airport in Kentucky, as designated on the license application. This license shall authorize an airline to transport if both the consignor and consignee in each case are authorized by the laws of the states of their residence to sell, purchase, ship, or receive the alcoholic beverages.
- (4) The office may issue a convention center or convention hotel complex license for the retail sale of distilled spirits, wine, and malt beverages for consumption on the premises to a convention center or hotel having seating capacity of one thousand (1,000) or more persons. The license shall cover all alcoholic beverage sales on the premises, except that a separate hotel in-room service license shall be required, where applicable. An extended supplement license under subsection (5) of this section may also be issued where applicable. The convention center or convention hotel complex license shall be a nonquota license and shall not be transferable

to other premises. The provisions of this subsection shall not apply to convention center licenses or the renewal thereof, other than those in a city of the first class or a county containing a city of the first class or a consolidated local government, if the original license was issued prior to July 15, 1998.

- (5) Where it is determined by the office to be in the best interest of promoting tourism, conventions, and the economic development of Kentucky or any part thereof, the office may issue a supplemental license for the retail sale of alcoholic beverages by the drink at convention centers, at horse race tracks licensed to conduct a race meeting under KRS Chapter 230, at commercial airports through which more than five hundred thousand (500,000) passengers arrive or depart annually, ~~and~~ at automobile race tracks having a seating capacity of at least thirty thousand (30,000) people, **and at qualified historic sites**. Upon application by the holder of a retail alcoholic beverage license at a convention center, convention hotel complex, horse race track, automobile race track, ~~meeting the requirements of this subsection, or~~ commercial airport, **or qualified historic site meeting the requirements of this subsection** as provided above, the office may establish the days when the supplemental license will be valid at the specific location, including Sundays after 1 p.m. The supplemental license fee shall be established, and shall be in addition to all other licenses and fees due by the holder in connection with the retailing of alcoholic beverages. The office may, by administrative regulation or special conditions of the supplemental permit, establish such restrictions on the use of the license as will insure that it will be primarily for the benefit of the convention business, the horse racing industry, passengers at large commercial airports, ~~and~~ the automobile racing industry, **and qualified historic sites**.

Section 7. KRS 244.500 is amended to read as follows:

- (1) No person holding a license to sell malt beverages shall offer or give anything tangible of value as a premium for the return of caps, stoppers, corks, stamps, wrappers, coupons, or labels taken from any bottle, case, barrel, or package containing malt beverages or to offer or give anything of value as a premium, gift, or prize for any purpose in connection with the sale of malt beverages.
- (2) Subsection (1) of this section shall not apply to the return of moneys specifically deposited for the return of the original containers to the owners; nor shall subsection (1) of this section prohibit brewers, wholesalers, or distributors from giving anything of value as a premium, gift, or prize to wholesalers, distributors, or their employees in connection with sales incentive programs.
- (3) Subsection (1) of this section shall not apply to brewer-sponsored national sweepstakes in which major prizes, not including rebates, price discount coupons, or brand-related novelty items are given to consumers based on certificates found in malt beverage packages or on point of sale materials. Malt beverage distributors, retail licensees, and their employees shall not be eligible to redeem the certificates or participate in the national sweepstakes.
- (4) ***Subsection (1) of this section shall not prohibit brewers, out-of-state brewers, wholesalers, distributors, or retail licensees from selling malt beverages packaged in or securely bundled with brand-related novelty items if the price charged for the packaged or bundled malt beverages specifically includes the cost of the brand-related novelty item.***

SECTION 8. A NEW SECTION OF KRS CHAPTER 242 IS CREATED TO READ AS FOLLOWS:

- (1) ***In order to promote economic development and tourism, other provisions of the Kentucky Revised Statutes notwithstanding, a city or county in which prohibition is in effect may, by petition in accordance with KRS 242.020, hold a local option election on the sale of alcoholic beverages by the drink at restaurants and dining facilities that seat a minimum of fifty (50) persons and derive a minimum of seventy percent (70%) of their gross receipts from the sale of food if alcoholic beverages are purchased in conjunction with a meal. The election shall be held in accordance with KRS 242.030(1), (2), and (5), 242.040, and 242.060 to 242.120, and the proposition on the ballot shall state "Are you in favor of the sale of alcoholic beverages by the drink in (name of city or county) at restaurants and dining facilities with a seating capacity of at least fifty (50) persons and which derive at least seventy percent (70%) of their gross receipts from the sale of food if the alcoholic beverage is purchased in conjunction with a meal?". If the majority of the votes in an election held pursuant to this subsection are "Yes," licenses may be issued to qualified restaurants and dining facilities and the licensees may be regulated and taxed in accordance with KRS 242.185(4) and (5).***
- (2) ***The sale of alcoholic beverages under subsection (1) of this section shall be incidental to the sale of a meal. Restaurants and dining facilities that are issued a license under subsection (1) of this section shall not have an open bar and shall be prohibited from selling alcoholic beverages to any person who has not purchased or does not purchase a meal. Alcoholic beverages shall be deemed to have been purchased in conjunction***

with a meal if the alcoholic beverages are served after the meal is ordered and no more than one-half (1/2) hour after the meal is completed.

Section 9. KRS 243.033 is amended to read as follows:

- (1) A caterer's license may be issued as a supplementary license to a caterer that holds a retail package liquor license or a distilled spirits and wine by the drink retail license or a limited restaurant license.
- (2) The caterer's license may be issued as a primary license to a caterer in any wet territory for the premises that serves as the caterer's commissary and designated banquet hall. No primary caterer's license shall be issued to a premises that operates as a restaurant. The alcoholic beverage stock of the caterer shall be kept under lock and key at the licensed premises during the time that the alcoholic beverages are not being used in conjunction with a catered function.
- (3) The caterer's license shall authorize the caterer to:
 - (a) Purchase and store alcoholic beverages in the manner prescribed in KRS 243.250, 243.280, and 244.310;
 - (b) Transport, sell, serve, and deliver malt beverages by the drink at locations away from the licensed premises or at the caterer's designated banquet hall in conjunction with the catering of food and malt beverages for a customer and his or her guests, in:
 1. Cities and counties in which prohibition is not in effect under KRS 242.185(6) ***or Section 8 of this Act*** if the receipts from the catering of food at any catered event are at least seventy percent (70%) of the gross receipts from the catering of both food and malt beverages; or
 2. All other wet territory if the receipts from the catering of food at any catered event are at least thirty-five percent (35%) of the gross receipts from the catering of both food and malt beverages;
 - (c) Transport, sell, serve, and deliver distilled spirits and wine by the drink at locations away from the licensed premises or at the caterer's designated banquet hall in conjunction with the catering of food and alcoholic beverages for a customer and his guests, in:
 1. Cities and counties in which prohibition is not in effect under KRS 242.185(6) ***or Section 8 of this Act*** if the receipts from the catering of food at any catered event are at least seventy percent (70%) of the gross receipts from the catering of both food and alcoholic beverages;
 2. Cities of the fourth class and counties containing cities of the fourth class in which prohibition is not in effect under KRS 242.185(1) to (5) if the receipts from the catering of food at any catered event are at least fifty percent (50%) of the gross receipts from the catering of both food and alcoholic beverages; or
 3. All other wet territory in which the sale of distilled spirits and wine by the drink is authorized if the receipts from the catering of food at any catered event are at least thirty-five percent (35%) of the gross receipts from the catering of both food and alcoholic beverages;
 - (d) Receive and fill telephone orders for alcoholic beverages in conjunction with the ordering of food for a catered event; and
 - (e) Receive payment for alcoholic beverages served at a catered event on a by-the-drink or by-the-event basis. The caterer may bill the host for by-the-function sales of alcoholic beverages in the usual course of the caterer's business.
- (4) A caterer licensee shall not cater alcoholic beverages at locations for which retail alcoholic beverage licenses or special temporary licenses have been issued.
- (5) A caterer licensee shall not cater distilled spirits and wine on Sunday except in territory in which the Sunday sale of distilled spirits and wine is permitted under the provisions of KRS 244.290 and 244.295. A caterer licensee shall not cater malt beverages on Sunday except in territory in which the Sunday sale of malt beverages is permitted under the provisions of KRS 244.480.
- (6) The location at which alcoholic beverages are sold, served, and delivered by a caterer, pursuant to this section, shall not constitute a public place for the purpose of KRS Chapter 222. If the location is a multi-unit structure,

only the unit or units at which the function being catered is held shall be excluded from the public place provisions of KRS Chapter 222.

- (7) The caterer licensee shall post a copy of his caterer's license at the location of the function for which alcoholic beverages are catered.
- (8) The name and license numbers of the caterer shall be painted or securely attached, in a contrasting color, in a form prescribed by the board by promulgation of an administrative regulation, upon all vehicles used by the caterer to transport alcoholic beverages.
- (9) All restrictions and prohibitions applying to a distilled spirits and wine retail drink licensee not inconsistent with this section, shall apply to the caterer licensee.
- (10) The caterer licensee shall maintain records as set forth in KRS 244.150 and in administrative regulations promulgated by the board.

Section 10. KRS 244.290 is amended to read as follows:

- (1) A premises that is licensed to sell distilled spirits or wine at retail shall not be permitted to remain open during the hours the polls are open on any regular or primary election day unless the licensee provides a separate locked department in which all stock of distilled spirits and wine are kept during the hours the polls are open.
- (2) In any county containing a city of the first or second class in which the sale of distilled spirits and wine by the drink is permitted under KRS Chapter 242, an election on the question of permitting the sale of distilled spirits and wine by the drink on Sunday may be held as provided in KRS Chapter 242.
- (3) Except as provided in KRS 243.050, a premise for which there has been granted a license for the sale of distilled spirits or wine at retail ***by the drink or by the package*** shall not remain open for any purposes between midnight and 6 a.m. or at any time during the twenty-four (24) hours of a Sunday, unless:
 - (a) The licensee provides a separate locked department in which all stocks of distilled spirits and wine are kept during those times; or
 - (b) The legislative body of a city of the first, second, third, or fourth class ***or an urban-county government***, or the fiscal court of a county containing a city of the first, second, third, or fourth class, has otherwise established the hours and times in which distilled spirits and wine may be sold within its jurisdictional boundaries.
- (4) In any county containing a city of the first, second, or third class or any city located therein in which the sale of distilled spirits and wine is permitted under KRS Chapter 242, the legislative body of the city or county may, by ordinance, permit the sale of distilled spirits and wine by the drink on Sunday from 1 p.m. until the designated closing hour of that locality at hotels, motels, or restaurants which:
 - (a) Have dining facilities with a minimum seating capacity of one hundred (100) people at tables; and
 - (b) Receive at least fifty percent (50%) or more of their gross annual income from the dining facilities from the sale of food.
- (5) In any county containing a city of the first class or in any city located therein in which the sale of distilled spirits and wine is permitted under KRS Chapter 242, the distilled spirits director may issue a license to holders of a distilled spirits and wine retail drink quota license or a special private club license which permits the sale of distilled spirits and wine by the drink on Sunday from 1 p.m. until the prevailing time for that locality.
- (6) Any city of the fourth class or county containing a city of the fourth class which has enacted a comprehensive, regulatory ordinance relating to the licensing and operation of hotels, motels, inns, or restaurants for the sale of alcoholic beverages by the drink under KRS 242.185(1), may also regulate and provide for the limited sale of distilled spirits and wine by the drink on Sundays if:
 - (a) The limited Sunday drink licenses are issued only to those hotels, motels, inns, or restaurants authorized to sell alcoholic beverages by the drink under KRS 242.185(3); and
 - (b) The holders of distilled spirits and wine retail drink licenses have applied to the state director and meet all other legal requirements for obtaining a limited Sunday liquor by the drink license.
- (7) ***Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, in any county containing an urban-county government where Sunday sales of distilled spirits and wine by the drink have been***

previously approved, the legislative body of the urban-county government may by ordinance extend Sunday sales to any premises licensed to sell distilled spirits and wine by the drink located within the territorial boundaries of the urban-county government and may by ordinance establish the hours such distilled spirits and wine by the drink may be sold.

Section 11. KRS 244.295 is amended to read as follows:

- (1) In any county containing an urban-county government, a premises that has been granted a license for the sale of distilled spirits or wine at retail shall not be permitted to remain open for any purpose between midnight and 6 a.m., or at any time during the twenty-four (24) hours of a Sunday, or during the hours the polls are open on any regular or primary election day unless the licensee provides a separate department within his licensed premises capable of being locked and closed off, within which is kept all stocks of distilled spirits and wine, and all fixtures and apparatus connected with his business as a licensee, and the department is kept locked during the time mentioned above. The licensee shall be deemed to have complied with this section; except that the legislative body of an urban-county government in which traffic in distilled spirits and wine is permitted under KRS Chapter 242 shall have the exclusive right and power, by ordinance, to establish the hours and times in which distilled spirits and wine may be sold within its jurisdictional boundaries. Provided, however, distilled spirits or wine may not be sold in any portion of a county containing an urban-county government during the twenty-four (24) hours between 6 a.m. Sunday and 6 a.m. Monday, except as provided in subsections (2) and (3) of this section, and distilled spirits or wine may not be sold on any election day while the polls are still open; and provided, also, that all stocks of distilled spirits and wine must be kept locked during the hours in which the licensee is prohibited from selling same.
- (2) In any county containing an urban-county government in which the sale of distilled spirits and wine is permitted under KRS Chapter 242, an election on the question of permitting the sale of distilled spirits and wine by the drink on Sunday may be held as provided in KRS 242.020 to 242.040 and 242.060 to 242.120. In any election, the form of the proposition shall be, "Are you in favor of the sale of distilled spirits and wine by the drink between the hours of one p.m. and midnight on Sunday in (name of county)?"
- (3) In any county containing an urban-county government in which the sale of distilled spirits and wine is permitted under KRS Chapter 242, the legislative body of such urban-county government may by resolution or ordinance submit to the electorate a proposal to permit the sale of distilled spirits and wine by the drink on Sunday from 1 p.m. until a closing hour specified in the proposal by hotels, motels, convention centers, convention hotel complexes, restaurants, racetracks, and commercial airports which are licensed for the retail sale of distilled spirits and wine by the drink and which have dining facilities with a minimum seating capacity of one hundred (100) people at tables and which receive at least fifty percent (50%) or more of gross annual income from dining facilities by the sale of food. The proposal to be submitted to the electorate shall be so framed that any voter who wishes to vote in favor of the limited Sunday sales of distilled spirits and wine by the drink may signify his approval by voting "yes" and any voter who wishes to vote against the limited Sunday sales of distilled spirits and wine by the drink may do so by voting "no." The election shall be held on a date stipulated by the legislative body, and the cost of the election shall be borne by the urban-county government. The proposal shall be published pursuant to KRS Chapter 424 and shall also be advertised by written or printed handbills posted at not less than five (5) conspicuous places in each precinct of the county for two (2) weeks before the election. The general election laws, including penalties for violations, shall apply to the election, except where those laws are inconsistent with the provisions of this section. The proposal submitted to the electorate shall be effective immediately if a majority of those voting on the proposal shall vote "yes."
- (4) In any county containing an urban-county government in which the sale of distilled spirits and wine by the drink is permitted on Sunday as provided in subsections (2) and (3) of this section, holders of distilled spirits and wine retail drink licenses may apply to the director of the Division of Distilled Spirits for a special Sunday sale retail drink license. Upon receipt of an application and payment of the prescribed fee, the director shall issue a license.
- (5) *Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, in any county containing an urban-county government where Sunday sales of distilled spirits and wine by the drink have been previously approved, the legislative body of the urban-county government may by ordinance extend Sunday sales to any premises licensed to sell distilled spirits and wine by the drink located within the territorial boundaries of the urban-county government and may by ordinance establish the hours such distilled spirits and wine by the drink may be sold.*

Section 12. KRS 244.480 is amended to read as follows:

- (1) Except as provided in subsection (3) of this section, no brewer or distributor shall deliver any malt beverages on Sunday or between the hours of midnight and 6 a.m. on any other day.
- (2) Except as provided in subsection (3) of this section, no retailer shall sell, give away, or deliver any malt beverages between midnight and 6 a.m. or at any time during the twenty-four (24) hours of a Sunday or during the hours the polls are open on a primary or regular election day.
- (3) The legislative body of *an urban-county government* or a city of the first, second, third, or fourth class or of a county containing *an urban-county government* or a city of the first, second, third, or fourth class in which traffic in malt beverages is permitted by KRS Chapter 242, shall have the exclusive power to establish the times in which malt beverages may be sold within its jurisdictional boundaries, including Sunday sales if the hours so fixed:
 - (a) Shall not prohibit the sale, gift, or delivery of any malt beverages between 6 a.m. and midnight during any day, except Sunday; and
 - (b) Prohibit the sale of malt beverages on any primary or regular election day during the hours the polls are open.

Approved March 23, 2007.

CHAPTER 100

(SB 82)

AN ACT relating to brownfields redevelopment.

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

Section 1. KRS 132.010 is amended to read as follows:

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

- (1) "Department" means the Department of Revenue.
- (2) "Taxpayer" means any person made liable by law to file a return or pay a tax.
- (3) "Real property" includes all lands within this state and improvements thereon.
- (4) "Personal property" includes every species and character of property, tangible and intangible, other than real property.
- (5) "Resident" means any person who has taken up a place of abode within this state with the intention of continuing to abide in this state; any person who has had his actual or habitual place of abode in this state for the larger portion of the twelve (12) months next preceding the date as of which an assessment is due to be made shall be deemed to have intended to become a resident of this state.
- (6) "Compensating tax rate" means that rate which, rounded to the next higher one-tenth of one cent (\$0.001) per one hundred dollars (\$100) of assessed value and applied to the current year's assessment of the property subject to taxation by a taxing district, excluding new property and personal property, produces an amount of revenue approximately equal to that produced in the preceding year from real property. However, in no event shall the compensating tax rate be a rate which, when applied to the total current year assessment of all classes of taxable property, produces an amount of revenue less than was produced in the preceding year from all classes of taxable property. For purposes of this subsection, "property subject to taxation" means the total fair cash value of all property subject to full local rates, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution and the difference between the fair cash value and agricultural or horticultural value of agricultural or horticultural land.
- (7) "Net assessment growth" means the difference between:
 - (a) The total valuation of property subject to taxation by the county, city, school district, or special district in the preceding year, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution in the current year over that exempted in the preceding year, and

- (b) The total valuation of property subject to taxation by the county, city, school district, or special district for the current year.
- (8) "New property" means the net difference in taxable value between real property additions and deletions to the property tax roll for the current year. "Real property additions" shall mean:
- (a) Property annexed or incorporated by a municipal corporation, or any other taxing jurisdiction; however, this definition shall not apply to property acquired through the merger or consolidation of school districts, or the transfer of property from one (1) school district to another;
 - (b) Property, the ownership of which has been transferred from a tax-exempt entity to a nontax-exempt entity;
 - (c) The value of improvements to existing nonresidential property;
 - (d) The value of new residential improvements to property;
 - (e) The value of improvements to existing residential property when the improvement increases the assessed value of the property by fifty percent (50%) or more;
 - (f) Property created by the subdivision of unimproved property, provided, that when such property is reclassified from farm to subdivision by the property valuation administrator, the value of such property as a farm shall be a deletion from that category;
 - (g) Property exempt from taxation, as an inducement for industrial or business use, at the expiration of its tax exempt status;
 - (h) Property, the tax rate of which will change, according to the provisions of KRS 82.085, to reflect additional urban services to be provided by the taxing jurisdiction, provided, however, that such property shall be considered "real property additions" only in proportion to the additional urban services to be provided to the property over the urban services previously provided; and
 - (i) The value of improvements to real property previously under assessment moratorium.
- "Real property deletions" shall be limited to the value of real property removed from, or reduced over the preceding year on, the property tax roll for the current year.
- (9) "Agricultural land" means:
- (a) Any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/or the growing of tobacco and/or other crops including timber;
 - (b) Any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for aquaculture; or
 - (c) Any tract of land devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government.
- (10) "Horticultural land" means any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants.
- (11) "Agricultural or horticultural value" means the use value of "agricultural or horticultural land" based upon income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use value, excluding sales representing purchases for farm expansion, better accessibility, and other factors which inflate the purchase price beyond farm use value, if any, considering the following factors as they affect a taxable unit:
- (a) Relative percentages of tillable land, pasture land, and woodland;
 - (b) Degree of productivity of the soil;
 - (c) Risk of flooding;
 - (d) Improvements to and on the land that relate to the production of income;

- (e) Row crop capability including allotted crops other than tobacco;
 - (f) Accessibility to all-weather roads and markets; and
 - (g) Factors which affect the general agricultural or horticultural economy, such as: interest, price of farm products, cost of farm materials and supplies, labor, or any economic factor which would affect net farm income.
- (12) "Deferred tax" means the difference in the tax based on agricultural or horticultural value and the tax based on fair cash value.
- (13) "Homestead" means real property maintained as the permanent residence of the owner with all land and improvements adjoining and contiguous thereto including, but not limited to, lawns, drives, flower or vegetable gardens, outbuildings, and all other land connected thereto.
- (14) "Residential unit" means all or that part of real property occupied as the permanent residence of the owner.
- (15) "Special benefits" are those which are provided by public works not financed through the general tax levy but through special assessments against the benefited property.
- (16) "Mobile home" means a structure, transportable in one (1) or more sections, which when erected on site measures eight (8) body feet or more in width and thirty-two (32) body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their assigns and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure.
- (17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, and motor home.
- (a) Travel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and with a living area of less than two hundred twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units or fixtures) and bath and toilet rooms.
 - (b) Camping trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use.
 - (c) Truck camper: A portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pick-up truck.
 - (d) Motor home: A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle.
- (18) ***"Hazardous substances" shall have the meaning provided in KRS 224.01-400.***
- (19) ***"Pollutant or contaminant" shall have the meaning provided in KRS 224.01-400.***
- (20) ***"Release" shall have the meaning as provided in either or both KRS 224.01-400 and KRS 224.60-115.***
- (21) "Qualifying voluntary environmental remediation property" means real property subject to the provisions of KRS 224.01-400 and 224.01-405, ***or 224.60-135 where*** ~~for which~~ the Environmental and Public Protection Cabinet has made a determination that:
- (a) ***All releases of hazardous substances, pollutants, contaminants, petroleum or petroleum products at the property occurred prior to the property owner's acquisition of the property*** ~~The responsible parties are financially unable to carry out the obligations in KRS 224.01-400 and 224.01-405;~~ and
 - (b) ***The property owner made all appropriate inquiry into previous ownership and uses of the property in accordance with generally accepted practices prior to the acquisition of the property;*** ~~The property~~

~~was acquired after January 1, 2005, by a bona fide prospective purchaser as defined in 42 U.S.C. sec. 9601(40).]~~

- (c) *The property owner or a responsible party have provided all legally required notices with respect to hazardous substances, pollutants, contaminants, petroleum or petroleum products found at the property;*
- (d) *The property owner is in compliance with all land use restrictions and does not impede the effectiveness or integrity of any institutional control;*
- (e) *The property owner complied with any information request or administrative subpoena under KRS Chapter 224; and*
- (f) *The property owner is not affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum or petroleum products on the property pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, through:*
 - 1. *Direct or indirect familial relationship;*
 - 2. *Any contractual, corporate, or financial relationship, excluding relationships created by instruments convey or financing title or by contracts for sale of goods or services; or*
 - 3. *Reorganization of a business entity that was potentially liable.*

(22)~~[(19)]~~ "Intangible personal property" means stocks, mutual funds, money market funds, bonds, loans, notes, mortgages, accounts receivable, land contracts, cash, credits, patents, trademarks, copyrights, tobacco base, allotments, annuities, deferred compensation, retirement plans, and any other type of personal property that is not tangible personal property.

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

- (1) The owner or person assessed shall pay an annual ad valorem tax for state purposes at the rate of:
 - (a) Thirty-one and one-half cents (\$0.315) upon each one hundred dollars (\$100) of value of all real property directed to be assessed for taxation;
 - (b) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, upon the prior approval of the Kentucky Economic Development Finance Authority, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
 - (c) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all qualifying voluntary environmental remediation property, provided the ~~property owner~~~~[bona fide prospective purchaser]~~ *has corrected the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the Environmental and Public Protection Cabinet pursuant to KRS 224.01-400, 224.01-405, or 224.60-135 and provided the cleanup was not financed through a public grant or the Petroleum Storage Tank Environmental Assurance Fund*~~[obtained a covenant not to sue from the Environmental and Public Protection Cabinet under KRS 224.01-526 for all known releases located on the property]~~. This rate shall apply for a period of three (3) years following the *Environmental and Public Protection Cabinet's* issuance of *a No Further Action Letter or its equivalent*,~~[the covenant not to sue,]~~ after which the regular tax rate shall apply;
 - (d) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all tobacco directed to be assessed for taxation;
 - (e) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of unmanufactured agricultural products;
 - (f) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations;

- (g) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all livestock and domestic fowl;
 - (h) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;
 - (i) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all machinery actually engaged in manufacturing;
 - (j) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna;
 - (k) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all property which has been certified as a pollution control facility as defined in KRS 224.01-300;
 - (l) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390;
 - (m) Twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043;
 - (n) Five cents (\$0.05) upon each one hundred dollars (\$100) of value of goods held for sale in the regular course of business, which includes machinery and equipment held in a retailer's inventory for sale or lease originating under a floor plan financing arrangement; and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business;
 - (o) Ten cents (\$0.10) per one hundred dollars (\$100) of assessed value on the operating property of railroads or railway companies that operate solely within the Commonwealth;
 - (p) One and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value on aircraft not used in the business of transporting persons or property for compensation or hire;
 - (q) One and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value on federally documented vessels not used in the business of transporting persons or property for compensation or hire, or for other commercial purposes; and
 - (r) Forty-five cents (\$0.45) upon each one hundred dollars (\$100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed, except as provided in KRS 132.030, 132.200, 136.300, and 136.320, providing a different tax rate for particular property.
- (2) Notwithstanding subsection (1)(a) of this section, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%), excluding:
- (a) The assessment of new property as defined in KRS 132.010(8);
 - (b) The assessment from property which is subject to tax increment financing pursuant to KRS Chapter 65; and
 - (c) The assessment from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents (\$0.015) pursuant to subsection (1)(b) of this section. In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.
- (3) By July 1 each year, the department shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (2) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the department shall, when either real property assessments of at least seventy-five percent (75%) of the total

number of counties of the Commonwealth have been determined to be acceptable by the department, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the department, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.

- (4) If the tax rate set by the department as provided in subsection (2) of this section produces more than a four percent (4%) increase in real property tax revenues, excluding:
 - (a) The revenue resulting from new property as defined in KRS 132.010(8);
 - (b) The revenue from property which is subject to tax increment financing pursuant to KRS Chapter 65; and
 - (c) The revenue from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents (\$0.015) pursuant to subsection (1) of this section;

the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.

- (5) The provisions of subsection (2) of this section notwithstanding, the assessed value of unmined coal certified by the department after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (2) of this section. The calculated rate shall, however, be applied to unmined coal property, and the state revenue shall be devoted to the program described in KRS 146.550 to 146.570, except that four hundred thousand dollars (\$400,000) of the state revenue shall be paid annually to the State Treasury and credited to the Office of Energy Policy for the purpose of public education of coal-related issues.

Section 3. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the class of property described in KRS 132.030 and the following classes of property, which shall be subject to taxation for state purposes only:

- (1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;
- (2) Livestock, ratite birds, and domestic fowl;
- (3) Capital stock of savings and loan associations;
- (4) Machinery actually engaged in manufacturing, products in the course of manufacture, and raw material actually on hand at the plant for the purpose of manufacture. The printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be manufacturing;
- (5) Commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna; however, radio or television towers not essential to the production of the wave or signal broadcast shall not be included;
- (6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents (\$0.015) on each one hundred dollars (\$100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents (\$0.045) on each one hundred dollars (\$100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;
- (7) All privately owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
- (8) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;

- (9) Property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (10) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;
- (11) Tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;
- (12) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460;
- (13) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (14) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230, and all motor vehicles with a salvage title held by an insurance company;
- (15) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.095;
- (16) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800;
- (17) New boats and new marine equipment held for retail sale under a floor plan financing arrangement by a dealer registered under KRS 235.220;
- (18) Aircraft not used in the business of transporting persons or property for compensation or hire if an exemption is approved by the county, city, school, or other taxing district in which the aircraft has its taxable situs;
- (19) Federally documented vessels not used in the business of transporting persons or property for compensation or hire or for other commercial purposes, if an exemption is approved by the county, city, school, or other taxing district in which the federally documented vessel has its taxable situs;
- (20) Any nonferrous metal that conforms to the quality, shape, and weight specifications set by the New York Mercantile Exchange's special contract rules for metals, and which is located or stored in a commodity warehouse and held on warrant, or for which a written request has been made to a commodity warehouse to place it on warrant, according to the rules and regulations of a trading facility. In this subsection:
 - (a) "Commodity warehouse" means a warehouse, shipping plant, depository, or other facility that has been designated or approved by a trading facility as a regular delivery point for a commodity on contracts of sale for future delivery; and
 - (b) "Trading facility" means a facility that is designated by or registered with the federal Commodity Futures Trading Commission under 7 U.S.C. secs. 1 et seq. "Trading facility" includes the Board of Trade of the City of Chicago, the Chicago Mercantile Exchange, and the New York Mercantile Exchange; and
- (21) Qualifying voluntary environmental remediation property for a period of three (3) years following the *Environmental and Public Protection Cabinet's issuance of a No Further Action Letter or its equivalent, pursuant to the correction of the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the Environmental and Public Protection Cabinet pursuant to KRS 224.01-400, 224.01-405, or 224.60-135 and provided the cleanup was not financed through a public grant program of the Petroleum Storage Tank Environmental Assurance Fund*~~issuance of a covenant not to sue by the Environmental and Public Protection Cabinet for all known releases located on the property~~; and
- (22) Biotechnology products held in a warehouse for distribution by the manufacturer or by an affiliate of the manufacturer. For the purposes of this section:
 - (a) "Biotechnology products" means those products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms.

Biotechnology products does not include pharmaceutical products which are produced from chemical compounds;

- (b) "Warehouse" includes any establishment that is designed to house or store biotechnology products, but does not include blood banks, plasma centers, or other similar establishments; and
- (c) "Affiliate" means an individual, partnership, or corporation that directly or indirectly owns or controls, or is owned or controlled by, or is under common ownership or control with, another individual, partnership, or corporation.

Section 4. KRS 141.418 is amended to read as follows:

(1) As used in this section:

- (a) *"Hazardous substances" shall have the meaning provided in KRS 224.01-400;*
- (b) *"Pollutant or contaminant" shall have the meaning provided in KRS 224.01-400;*
- (c) *"Petroleum" and "petroleum products" shall have the meaning provided in KRS 224.60-115;*
- (d) *"Release" shall have the meaning as provided in either or both KRS 224.01-400 and KRS 224.60-115;*
- (e) ~~(b)~~ *"Qualifying voluntary environmental remediation property" means real property subject to the provisions of KRS 224.01-400, ~~and~~ KRS 224.01-405, or 224.60-135 where ~~for which~~ the Environmental and Public Protection Cabinet has made a determination that:*
 - 1. *All releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property occurred prior to the property owner's acquisition of the property ~~[The responsible parties are financially unable to carry out the obligations in KRS 224.01-400 and KRS 224.01-405]; and~~*
 - 2. *The property owner made all appropriate inquiry into previous ownership and uses of the property in accordance with generally accepted practices ~~[The property was acquired after March 18, 2005, by a bona fide prospective purchaser as defined in 42 U.S.C. sec. 9601(40)];~~*
 - 3. *The property owner or a responsible party have provided all legally required notices with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property;*
 - 4. *The property owner is in compliance with all land use restrictions and does not impede the effectiveness or integrity of any institutional control;*
 - 5. *The property owner complied with any information request or administrative subpoena under KRS Chapter 224; and*
 - 6. *The property owner is not affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, through:*
 - a. *Direct or indirect familial relationship;*
 - b. *Any contractual, corporate or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or*
 - c. *Reorganization of a business entity that was potentially liable;*
- (f) ~~(b)~~ *"Expenditures" means payment for work to characterize the extent of contamination and to remediate the contamination at a qualifying voluntary environmental remediation property; and*
- (g) ~~(e)~~ *"Taxpayer" means an individual subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040.*

- (2) (a) There shall be allowed a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040 for taxable years beginning after December 31, 2004, and against the tax imposed by KRS 141.0401 for taxable years beginning after December 31, 2006, for taxpayer expenditures made at a qualifying voluntary environmental remediation property in order to *correct the effect of a release of hazardous*

substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, consistent with a corrective action plan approved by the Environmental and Public Protection Cabinet pursuant to KRS 224.01-400, 224.01-405, or 224.60-135 and provided the cleanup was not financed through a public grant program or the Petroleum Storage Tank Environmental Assurance Fund~~[meet the requirements of an agreed order entered into by the taxpayer under the provisions of KRS 224.01-518, provided that the taxpayer has obtained a covenant not to sue from the Environmental and Public Protection Cabinet under KRS 224.01-526].~~

- (b) The credit allowed under paragraph (a) of this subsection shall be applied both to the income tax imposed under KRS 141.020 or 141.040 and to the limited liability entity tax imposed under KRS 141.0401, with the ordering of the credits as provided in KRS 141.0205.
- (3) The maximum total credit for each taxpayer shall not exceed one hundred fifty thousand dollars (\$150,000). For purposes of this section, an affiliated group of taxpayers required to file a consolidated return under KRS 141.200 shall be treated as one (1) taxpayer.
- (4) A taxpayer claiming a credit under this section shall submit receipts to the *Environmental and Public Protection Cabinet*~~[Finance and Administration Cabinet]~~ in proof of the expenditures claimed. The *Environmental and Public Protection Cabinet*~~[Finance and Administration Cabinet]~~ shall *verify*~~[forward]~~ the receipts~~[to the Environmental and Public Protection Cabinet for verification]~~. After the receipts are verified, the Finance and Administration Cabinet shall notify the taxpayer of eligibility for the credit.
- (5) The credit may be first claimed on the income tax return of the taxpayer filed in the taxable year during which the credit was certified. The amount of the allowable credit for any taxable year shall be twenty-five percent (25%) of the maximum credit approved. The credit may be carried forward for ten (10) successive taxable years.
- (6) If the taxpayer is a pass-through entity, the taxpayer shall apply the credit against the limited liability entity tax imposed by KRS 141.0401, and shall also pass the credit through to its members, partners, or shareholders in the same proportion as the distributive share of income or loss is passed through.

Approved March 23, 2007.

CHAPTER 101

(SB 105)

AN ACT relating to the discipline of dental professionals.

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

Section 1. KRS 313.330 is amended to read as follows:

The board may, upon complaint or upon its own motion, after a hearing conducted in accordance with KRS Chapter 13B, *issue a private admonishment, reprimand, or place on probation, or may revoke, suspend, refuse to renew, or refuse to issue a license to any dental hygienist who*~~[revoke, suspend, or refuse to renew the license of any dental hygienist by entering a final order to that effect, together with its findings in respect thereto, if it shall be determined that the licensee]:~~

- (1) Has violated any of the provisions of KRS 313.260 to 313.350 or any regulation *promulgated*~~[made]~~ thereunder;
- (2) Has made a material false statement in his *or her* application for examination;
- (3) No longer possesses good moral character;
- (4) Directly or indirectly advertises or solicits for dental hygiene business; or
- (5) Is grossly negligent in his *or her* profession.

A private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(l). A private admonishment shall not constitute disciplinary action, but may be used by the board for statistical purposes or in subsequent disciplinary action against the same licensee, certificate holder, or applicant.

Section 2. KRS 313.130 is amended to read as follows:

The board may, *upon complaint or upon its own motion, after a hearing conducted in accordance with KRS Chapter 13B*, issue a private admonishment, reprimand, or place on probation, or may revoke, suspend, refuse to renew, or refuse to issue a license to any dentist for any of the following causes:

- (1) Conviction of any felony or conviction of only those misdemeanors involving moral turpitude, in which case the record of conviction or a copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence.
- (2) Renting or lending to any person his license or diploma to be used as a license or diploma, or illegally or fraudulently obtaining a license from the board.
- (3) Unprofessional conduct, gross ignorance, or inefficiency in his profession or failure to accumulate a sufficient number of points for continuing dental education as prescribed by the board under the provisions of KRS 313.080.
- (4) Violating any of the provisions of this chapter or any lawful order, rule, or regulation made or issued under the provisions of this chapter.
- (5) Addiction to a drug habit.
- (6) Chronic or persistent alcoholism.
- (7) Such physical or mental disability, or other condition, that continued practice would be dangerous to patients or to the public.

A private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(l). A private admonishment shall not constitute disciplinary action but may be used by the board for statistical purposes or in subsequent disciplinary action against the same licensee, certificate holder, or applicant.

Approved March 23, 2007.

CHAPTER 102

(SB 111)

AN ACT relating to jury service

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

Section 1. KRS 29A.100 is amended to read as follows:

- (1) Upon the request of a prospective juror prior to assignment to a trial court, the Chief Circuit Judge, or after the juror's assignment to a trial court, the trial judge may excuse such juror upon a showing of undue hardship, extreme inconvenience, or public necessity. On the day on which the prospective jurors are summonsed to appear, any person not previously excused who desires to be excused shall be heard.
- (2) The Chief Circuit Judge may designate and authorize one (1) or more judges of the court, the court's clerk, a deputy clerk, the court's administrator, or a deputy court administrator to excuse a juror from service for a period not to exceed ten (10) days or to postpone jury service for a period not to exceed twelve (12) months. The reasons for excuse or postponement shall be entered in the space provided on the juror qualification form.
- (3) In his or her discretion the judge may excuse a juror from service entirely, reduce the number of days of service, or may postpone the juror's service temporarily for a period of time not to exceed, however, twenty-four (24) months. Whenever possible the judge shall favor temporary postponement of service or reduced service over permanent excuse. When excusing a juror, the judge shall record the juror's name, as provided in KRS 29A.080, and the reasons for granting the excuse.
- (4) *The judge shall excuse a mother who is breastfeeding a child or expressing breastmilk from jury service until such time as the child is old enough that the mother is no longer breastfeeding the child.*

Approved March 23, 2007.

CHAPTER 103

(HB 367)

AN ACT relating to the sale of horses.

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

Section 1. KRS 230.357 is amended to read as follows:

- (1) ***For purposes of this section, "equine" means a horse of any breed used for racing or showing, including prospective racehorses, breeding prospects, stallions, stallion seasons, broodmares, yearlings, or weanlings, or any interest therein.***
- (2) Any sale, purchase, or transfer of an equine~~[used for racing or showing, including prospective racehorses, breeding prospects, stallions, stallion seasons, broodmares, or weanlings, or any interest therein,]~~ shall be:
 - (a) Accompanied by a written bill of sale or acknowledgment of purchase and security agreement setting forth the purchase price; and
 - (b) Signed by both the purchaser and the seller or their duly authorized agent or, in a transaction solely relating to a season or fractional interest in the stallion, signed by the syndicate manager or stallion manager.
- ~~(3)(2)~~ In circumstances where a transaction described in subsection ~~(2)(1)~~ is accomplished through a public auction the bill of sale requirement described in subsection ~~(2)(1)~~ may be satisfied by the issuance of an auction receipt, generated by the auction house, and signed by the purchaser or the purchaser's duly authorized agent. An agent who signs an auction receipt on behalf of his or her principal shall do so only if authorized in writing. When presented with such authorization, all other parties to the transaction may presume that an agent signing on behalf of his or her principal is duly authorized to act for the principal.
- ~~(4)(3)~~ It shall be unlawful for any person to act as an agent for both the purchaser and the seller, which is hereby defined as a dual agent, in a transaction involving the sale, purchase, or transfer of an interest in an equine~~[used for racing or showing, including prospective racehorses, breeding prospects, stallions, stallion seasons, broodmares, or weanlings, or any interest therein,]~~ without:
 - (a) The prior knowledge of both the purchaser and the seller; and
 - (b) Written consent of both the purchaser and the seller.
- ~~(5)(4)~~ It shall be unlawful for a person acting as an agent for either a purchaser or a seller or acting as a dual agent in a transaction involving the sale, purchase, or transfer of an equine~~[used for racing or showing, including prospective racehorses, breeding prospects, stallions, stallion seasons, broodmares, or weanlings, or any interest therein,]~~ to receive compensation, fees, a gratuity, or any other item of value in excess of five hundred dollars (\$500) and related directly or indirectly to such transaction from an individual or entity, including any consigner involved in the transaction, other than an agent's principal, unless:
 - (a) The agent receiving and the person or entity making the payment disclose in writing the payment to both the purchaser and seller; and
 - (b) Each principal for whom the agent is acting consents in writing to the payment.
- ~~(6)(5)~~ Any person acting as an agent for a purchaser or seller or acting as a dual agent in a transaction involving the sale, purchase, or transfer of an equine~~[used for racing or showing, including prospective racehorses, breeding prospects, stallions, stallion seasons, broodmares, or weanlings, or any interest therein,]~~ shall, upon request by his or her principal or principals, furnish copies of all financial records and financial documents in the possession or control of the agent pertaining to the transaction to the principal or principals.~~{ However, disclosure of compensation arrangements described in subsection (7) of this section shall not be required. }~~ For purposes of this subsection, financial records shall not include the agent's or owner's work product used to internally evaluate the equine.
- ~~(7)(6)~~ Any person injured by a violation of this section shall recover treble damages from persons or entities violating this section, and the prevailing party in any litigation under this section shall be entitled to an award of costs of the suit, reasonable litigation expenses, and attorney's fees. As used in this section, treble damages shall equal three (3) times the sum of:

- (a) The difference, if any, between the price paid for the equine and the actual value of the equine at the time of sale; and
- (b) Any payment made in violation of subsection ~~(5)~~~~(4)~~ of this section.
- ~~(8)~~~~(7)~~ Nothing in this section shall require disclosure of compensation arrangements between a principal and an agent where no dual agency exists, where the agent is acting solely for the benefit of his or her principal, and where the agent is being compensated solely by his or her principal.
- ~~(9)~~~~(8)~~ Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, for transactions contemplated by this section that are accomplished through a public auction, this section shall not require disclosure of the reserves, the identity of the principals, or the auctioneer's commissions. Auction companies shall not be deemed to be dual agents for all purposes under this section.
- ~~(10)~~~~(9)~~ The provisions of this section shall not apply to the sale, purchase, or transfer of an equine used for showing if the sale, purchase, or transfer does not exceed ten thousand dollars (\$10,000).
- ~~(11)~~~~(10)~~ ***No contract or agreement for payment of a commission, fee, gratuity, or any other form of compensation in connection with any sale, purchase, or transfer of an equine shall be enforceable by way of an action or defense unless:***
 - (a) ***The contract or agreement is in writing and is signed by the party against whom enforcement is sought; and***
 - (b) ***The recipient of the compensation provides a written bill of sale for the transaction in accordance with subsections (2)(a) and (3) of this section.***
- (12) No person shall be held liable under this section unless that person has actual knowledge of the conduct constituting a violation of this section.

Approved March 23, 2007.

CHAPTER 104

(HB 285)

AN ACT relating to nonresident student contracts.

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

Section 1. KRS 157.350 is amended to read as follows:

Each district which meets the following requirements shall be eligible to share in the distribution of funds from the fund to support education excellence in Kentucky:

- (1) Employs and compensates all teachers for not less than one hundred eighty-five (185) days. The Kentucky Board of Education, upon recommendation of the ***commissioner of education***~~chief state school officer~~, shall prescribe procedures by which this requirement may be reduced during any year for any district which employs teachers for less than one hundred and eighty-five (185) days, in which case the eligibility of a district for participation in the public school fund shall be in proportion to the length of time teachers actually are employed;
- (2) Operates all schools for a term as provided in KRS 158.070 and administrative regulations of the Kentucky Board of Education. If the school term is less than one hundred eighty-five (185) days for any reason not approved by the Kentucky Board of Education on recommendation of the ***commissioner***~~chief state school officer~~, the eligibility of a district for participation in the public school fund shall be in proportion to the length of term the schools actually operate;
- (3) Compensates all teachers on the basis of a single salary schedule and in conformity with the provisions of KRS 157.310 to 157.440;
- (4) Includes no nonresident pupils in its average daily attendance, except as follows:

- (a) Pupils listed under a written agreement, which may be for multiple years, with the district of the pupils' legal residence. If an agreement cannot be reached, either board may appeal to the **commissioner**~~chief state school officer~~ for settlement of the **dispute**~~agreement~~.
- (b) The **commissioner**~~chief state school officer~~ shall have thirty (30) days to **resolve the dispute**~~establish the terms of agreement~~. Either board may appeal the **commissioner's**~~chief state school officer's~~ decision to the Kentucky Board of Education.
- (c) **The commissioner and the Kentucky Board of Education shall consider the factors affecting the districts, including but not limited to academic performance and the impact on programs, school facilities, transportation, and staffing of the districts.**
- (d) The Kentucky Board of Education shall have sixty (60) days to approve or amend the **decision**~~agreement~~ of the **commissioner**~~chief state school officer~~.

This subsection does not apply to those pupils enrolled in an approved class conducted in a hospital~~;~~ and ~~((b))~~ —pupils who have been expelled for behavioral reasons who shall be counted in average daily attendance under KRS 157.320;

- (5) Any secondary school which maintains a basketball team for boys for other than intramural purposes, shall maintain the same program for girls;
- (6) Any school district which fails to comply with subsection (5) shall be prohibited from participating in varsity competition in any sport for one (1) year. Determination of failure to comply shall be made by the Department of Education after a hearing requested by any person within the school district. The hearing shall be conducted in accordance with KRS Chapter 13B. A district under this subsection shall, at the hearing, have an opportunity to show inability to comply.

Approved March 23, 2007.

CHAPTER 105

(HB 394)

AN ACT relating to ophthalmic dispensers.

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

Section 1. KRS 326.010 is amended to read as follows:

As used in this chapter:

- (1) "Board" **means**~~as used in this chapter shall mean~~ the "Kentucky Board of Ophthalmic Dispensers."
- (2) "Ophthalmic dispensing~~[-]~~" **means that** a person~~practices ophthalmic dispensing within the meaning of the provisions of this chapter relating to ophthalmic dispensers, who~~ prepares and dispenses lenses, spectacles, eyeglasses, or appurtenances thereto to the intended wearers~~thereof~~ on written prescriptions from **licensed** physicians, osteopaths, or optometrists~~duly licensed to practice their profession~~, and in accordance with **these**~~such~~ prescriptions, interprets, measures, adapts, fits, and adjusts **the**~~such~~ lenses, spectacles, eyeglasses, or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eyes. The services and appliances relating to ophthalmic dispensing shall be dispensed, furnished, or supplied to the intended wearer or user~~thereof~~ only upon **a** written prescription issued by a physician, osteopath, or optometrist.~~[-but]~~ Duplications, replacements, reproductions, or repetitions may be **provided**~~done~~ without prescriptions, **but**~~in which event any such act~~ shall be construed to be ophthalmic dispensing the same as if performed on the basis of an original written prescription.
- (3) **"Optical establishment" means any establishment where ophthalmic dispensing services for the general public are offered, advertised, or performed. Optical establishment shall not include any establishment that comes under the practice of medicine by a duly licensed physician, the practice of osteopathy by a duly licensed osteopath, or the practice of optometry by a duly licensed optometrist.**

Section 2. KRS 326.070 is amended to read as follows:

- (1) Nothing in the provisions of this chapter relating to ophthalmic dispensing shall be construed to limit or restrict, in any respect, the practice of medicine by duly licensed physicians,~~or~~ the practice of osteopathy by

duly licensed osteopaths, or the practice of optometry by duly licensed optometrists. ~~A[, and such] licensed physician, osteopath, or optometrist shall have all the rights and privileges of which may accrue under the provisions of this chapter to~~ ophthalmic dispensers licensed ***under this chapter***~~hereunder~~.

- (2) This chapter shall not be construed to prohibit an unlicensed person from performing mechanical work upon inert matter in an optical office, laboratory, or shop.
- (3) Persons, firms, and corporations that sell completely assembled eyeglasses or spectacles without advice or aid as to ~~their~~~~the~~ selection~~thereof~~, as merchandise, from permanently located or established places of business shall not be subject to this chapter.
- (4) Physicians, osteopaths,~~and~~ optometrists, and their employees while working under their regulation and supervision shall have the right to practice ophthalmic dispensing without qualifying under this chapter and shall not be subject to any of the provisions ***of this chapter***~~herein~~.

Section 3. KRS 326.090 is amended to read as follows:

- (1) The board may refuse to issue a license, or may suspend, revoke, impose probationary conditions upon, impose an administrative fine upon, or issue a written reprimand against the holder of a license to practice ophthalmic dispensing or an apprentice license if the applicant or licensee has:
 - (a) Committed a dishonest or corrupt act. If the act is a crime, conviction in a criminal proceeding shall not be a condition precedent to disciplinary action. Upon conviction of the crime, the judgment and sentence are presumptive evidence of guilt at the ensuing disciplinary hearing of the licensee. Conviction includes all instances in which a plea of no contest is the basis of the conviction;
 - (b) Committed any unfair, false, misleading, or deceptive act or practice;
 - (c) Been incompetent or negligent in the practice of ophthalmic dispensing;
 - (d) Failed to comply with a lawful order of the board;
 - (e) Aided or abetted another person in falsely procuring or attempting to procure a license;
 - (f) Aided or abetted an unlicensed person in activities which violate KRS 326.030 and which are not otherwise exempted from the provisions of this chapter;
 - (g) Exhibited chronic or persistent inebriety or addiction to a drug habit, to an extent that disqualifies the applicant or the licensee from practicing with safety to the public;
 - (h) Committed fraud or deception in the application or in the examination for the license; or
 - (i) Violated any provisions of this chapter or administrative regulations promulgated in accordance with this chapter.
- (2) ***The board may impose a fine against any person who:***
 - (a) ***Operates an optical establishment without the supervision of a Kentucky-licensed ophthalmic dispenser;***
 - (b) ***Allows, aids, or abets an unlicensed person to perform activities that violate KRS 326.030 and are not otherwise exempted from the provisions of this chapter; or***
 - (c) ***Allows a Kentucky licensed ophthalmic dispenser to supervise more than one (1) optical establishment at the same time.***
- (3) After investigating an alleged violation and offering the licensee the opportunity to respond to the allegation, the board may issue a written reprimand to the licensee if the board determines that a violation that is not of a serious nature has occurred. A copy of the reprimand shall be placed in the permanent file of the licensee. The licensee may file a written response to the reprimand within thirty (30) days of receiving the reprimand or may request a hearing with the board. If the licensee responds to the reprimand, his or her response shall be placed in the licensee's permanent file. If the licensee requests a hearing, the board shall set aside the written reprimand, pending the outcome of a hearing by the board under the provisions of KRS Chapter 13B.

Section 4. KRS 326.100 is amended to read as follows:

- (1) The board before suspending, revoking, imposing probationary, or supervisory conditions upon, imposing an administrative fine, issuing a written reprimand, or taking any combination of these actions regarding any ~~person~~~~[licensee]~~ under this chapter shall conduct a hearing under the provisions of KRS Chapter 13B, upon the request of ~~that person~~~~[the licensee]~~.
- (2) After denying an application under the provisions of this chapter, the board shall grant a hearing to the denied applicant under the provisions of KRS Chapter 13B.
- (3) Any applicant aggrieved by a disciplinary action of the board may appeal the final order of the board to the Circuit Court in the county in which the licensee is practicing in accordance with KRS Chapter 13B.

Approved March 23, 2007.

CHAPTER 106

(HB 355)

AN ACT relating to the administration of boards established by local ordinance.

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

Section 1. KRS 147.670 is amended to read as follows:

The area planning commission shall have the power and duty to:

- (1) Prepare an area-wide comprehensive plan of the entire area within its jurisdiction, which includes all territory incorporated and unincorporated within the counties signator thereto. The area-wide comprehensive plan shall include at least all comprehensive plan elements and research requirements prescribed in KRS Chapter 100, so that the planning commissions of local planning units as established under KRS Chapter 100 and their respective legislative bodies, may adopt all or parts of said area-wide comprehensive plan, as it applies to their respective areas of jurisdiction, as a means of fulfilling the applicable requirements of KRS Chapter 100. This area-wide comprehensive plan shall be reviewed and amended, if necessary, at least once every five (5) years;
- (2) Appoint an executive director for the commission and fix his compensation. The director shall be qualified by training and experience in the field of planning and zoning;
- (3) Upon written request of a city or county within the territory of the area planning commission, the area planning commission's staff may prepare and submit for consideration to the appropriate local planning unit, zoning ordinances based on the comprehensive plans of such local planning unit. The area planning commission staff assigned to perform such work shall consult with the appropriate local planning unit as established under KRS Chapter 100, the city or county legislative bodies, and all property owners who are directly affected by any change in the zoning ordinance applicable to such local planning unit;
- (4) Prescribe the qualifications of, appoint, remove and fix the compensation of employees of the commission;
- (5) Prepare, publish and distribute reports and other material relating to the business of the commission;
- (6) Prepare and submit an annual budget to the area planning council for the operation of the commission;
- (7) Exercise general supervision of and make regulations for the administration of the affairs of the commission;
- (8) Establish policies, procedures, and priorities for assigning staff and providing services to planning units established under the provision of KRS Chapter 100, their respective cities and counties, and other public and private agencies and organizations, ***and may, irrespective of KRS 147.675, enter into agreements with cities, counties, and other public agencies and organizations in accordance with the provisions of KRS 65.210 to 65.300 for the administration of KRS 65.8801 to 65.8839 and KRS Chapters 99, 99A, 100, and 198B; and***
- (9) Keep an accurate and complete record of all commission proceedings, financial statements, and annually report to the various cities and counties signators to the agreement provided in KRS 147.620.

Section 2. KRS 65.8811 is amended to read as follows:

- (1) (a) A code enforcement board shall consist of ***no fewer than three***~~either three (3), five (5), or seven (7))~~ members who shall be appointed by the executive authority of the local government, subject to the approval of the legislative body.

- (b) A joint code enforcement board shall include representation on the board of all participating local governments and members shall be appointed as set out in the terms of the interlocal agreement.
- (2) ~~[(a)]~~ The initial appointments to a ~~three (3) member~~ code enforcement board shall be as follows:
- ~~(a) [1.] One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be~~ ~~One (1) member~~ appointed for a term of one (1) year;
- ~~(b) [2.] One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be~~ ~~One (1) member~~ appointed for a term of two (2) years; and
- ~~(c) [3.] One-third (1/3) of the membership or one-third (1/3) of the membership and one (1) member of the board shall be~~ ~~One (1) member~~ appointed for a term of three (3) years.
- ~~[(b)] The initial appointments to a five (5) member code enforcement board shall be as follows:~~
- ~~1. One (1) member appointed for a term of one (1) year;~~
 - ~~2. Two (2) members appointed for a term of two (2) years each; and~~
 - ~~3. Two (2) members appointed for a term of three (3) years each.~~
- ~~(c) The initial appointments to a seven (7) member code enforcement board shall be as follows:~~
- ~~1. Two (2) members appointed for a term of one (1) year each;~~
 - ~~2. Three (3) members appointed for a term of two (2) years each; and~~
 - ~~3. Two (2) members appointed for a term of three (3) years each.]~~

All subsequent appointments shall be made for a term of three (3) years.

- (3) (a) Each member of a code enforcement board shall have resided within the boundaries of the local government unit for a period of at least one (1) year prior to the date of the member's appointment and shall reside there throughout the term in office.
- (b) Board members serving on joint code enforcement boards shall have resided within the boundaries of the local government they represent for a period of at least one (1) year prior to the date of the member's appointment and shall reside there throughout the term in office.
- (4) A member may be reappointed, subject to approval of the legislative body.
- (5) Any vacancy on a code enforcement board shall be filled within sixty (60) days by the executive authority, subject to the approval of the legislative body. If a vacancy is not filled by the executive authority within sixty (60) days, the remaining members of the code enforcement board shall fill the vacancy. All vacancies shall be filled for the remainder of the unexpired term.
- (6) Any member of a code enforcement board may be removed by the appointing authority for misconduct, inefficiency, or willful neglect of duty. Any appointing authority who exercises the power to remove a member of a code enforcement board shall submit a written statement to the member and to the legislative body of the local government setting forth the reasons for removal. The member so removed shall have the right of appeal to the Circuit Court.
- (7) All members of a code enforcement board shall, before entering upon their duties, take the oath of office prescribed by Section 228 of the Constitution of the Commonwealth of Kentucky.
- (8) The members of a code enforcement board may be reimbursed for expenses or compensated, or both, as specified in the ordinance creating the board.
- (9) No member of a local government code enforcement board shall hold any elected or appointed office, whether paid or unpaid, or any position of employment with the unit of local government that has created the code enforcement board.
- (10) Each legislative body that elects to establish a code enforcement board is encouraged to provide opportunities for education regarding pertinent topics for the members of the code enforcement board.

Approved March 23, 2007.

CHAPTER 107

(HB 280)

AN ACT relating to funerals, burials, and other similar occasions and services.

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

Section 1. KRS 213.076 is amended to read as follows:

- (1) (a) A certificate of death or a provisional certificate of death for each death which occurs in the Commonwealth shall be filed with the cabinet or as otherwise directed by the state registrar prior to final disposition, and it shall be registered if it has been completed and filed in accordance with this section. The funeral director, or person acting as such, who first takes custody of a dead body shall be responsible for filing the certificate of death. The funeral director, or person acting as such, shall obtain the required personal and statistical particulars from the person best qualified to supply them over the signature and address of the informant.
- (b) *At the time of obtaining the required personal and statistical particulars from the informant referred to in paragraph (a) of this subsection, the funeral director, or person acting as such, shall ask the informant if the deceased ever served in the military. If the informant answers in the affirmative, then the funeral director, or person acting as such, shall provide the informant with a fact sheet, stating military burial rights, supplied by the Kentucky Department of Veterans' Affairs.*
- (c) The funeral director, or person acting as such, shall within five (5) days of the death, present the certificate to the attending physician, if any, or to the health officer or coroner as directed by the state registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record as required by this chapter.
- (d)~~(a)~~ It shall be unlawful for an institution to release a dead human body until the funeral director, or person acting as such, has completed and filed with the local registrar or person in charge of the institution, a provisional certificate of death. If death occurs outside an institution, the provisional certificate shall be filed with the local registrar by the funeral director, or person acting as such, prior to final disposition of the dead body. A copy of the provisional certificate of death signed by the person with whom it was filed, shall constitute authority for the possession, transportation, and, except for cremation, final disposition of the body.
- (e)~~(b)~~ All persons having in their possession a completed provisional certificate of death shall file the certificate at not more than weekly intervals with the local registrar.
- (f)~~(c)~~ If the place of death is unknown but the dead body is found in the Commonwealth, the certificate of death shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation subject to amendment upon completion of any postmortem examination required to be performed.
- (g)~~(d)~~ If death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in the Commonwealth, the death shall be registered in Kentucky, and the place where it is first removed shall be considered the place of death. If a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space, and the body is first removed from the conveyance in the Commonwealth, the death shall be registered in Kentucky, but the certificate shall show the actual place of death insofar as can be determined.
- (2) If any certificate of death is incomplete or unsatisfactory, the state registrar shall call attention to the defects in the certificate and require the person responsible for the entry to complete or correct it. The state registrar may also require additional information about the circumstances and medical conditions surrounding a death in order to properly code and classify the underlying cause.
- (3) The medical certification shall be completed, signed, and returned to the funeral director within five (5) working days after presentation to the physician, dentist, or chiropractor in charge of the patient's care for the illness or condition which resulted in death, except when inquiry is required by KRS 72.400 to 72.475. In such cases, and if the cause of death is unknown or under investigation, the cause of death shall be shown as such on the certificate. A supplemental report providing the medical information omitted from the original certificate

shall be filed by the certifier with the state registrar within five (5) days after receiving results of the inquiry as required by KRS 72.400 to 72.475. The supplemental report shall be made a part of the existing death certificate. This report shall be considered an amendment, and the death certificate shall be marked "Amended." In the absence of the physician, dentist, or chiropractor, or with such person's approval, the certificate may be completed and signed by his associate physician, dentist, or chiropractor, or the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, or a physician employed by the local health department, if the individual has access to the medical history of the case and death is due to natural causes.

- (4) If death occurs more than thirty-six (36) hours after the decedent was last treated or attended by a physician, dentist, or chiropractor, the case shall be referred to the coroner for investigation to determine and certify the cause of death. In the event that a coroner is not available to sign the certificate and there is no duly appointed deputy, the county judge/executive shall appoint a competent person to investigate the death and certify to its cause.
- (5)
 - (a) The physician, dentist, chiropractor, or coroner who certifies to the cause of death shall return the certificate to the funeral director, or person acting as such, who, in turn, shall file the certificate directly with the Vital Statistics Branch. Any certified copies of the record requested at the time of filing shall be issued in not more than two (2) working days.
 - (b) In the case of a death in which diabetes was an underlying cause or contributing condition, diabetes shall be listed in the appropriate location on the death certificate by the physician, dentist, chiropractor, or coroner who certifies to the cause of death.
 - (c) In the case of a death in which diabetes was an immediate, underlying, or contributing cause of or condition leading to death, the physician, dentist, chiropractor, or coroner who certifies to the cause of death shall check "yes" for each of the following questions on the death certificate:
 1. "Did the deceased have diabetes?"; and
 2. "Was diabetes an immediate, underlying, or contributing cause of or condition leading to death?".
- (6) The Vital Statistics Branch shall provide self-addressed, color-coded envelopes for the funeral homes in the Commonwealth of Kentucky.
- (7) Three (3) free verification-of-death statements shall be provided to the funeral director by the Vital Statistics Branch for every death in the Commonwealth of Kentucky.
- (8) The body of any person whose death occurs in Kentucky shall not be interred, deposited in a vault or tomb, cremated, or otherwise disposed of, or removed from or into any registration district, until a provisional certificate of death has been filed with the local registrar of the registration district in which the death occurs. If the death occurred from a disease declared by the Cabinet for Health and Family Services to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be granted by the registrar except under conditions prescribed by the Cabinet for Health and Family Services and the local health department. The Cabinet for Health and Family Services shall identify by regulation those communicable diseases which require blood and body fluid precautions. If a person who has been diagnosed as being infected with a communicable disease for which blood and body fluid precautions are required, dies within a health facility as defined in KRS 216B.015, the facility shall notify any embalmer or funeral director to whom the body will be transported of the need for such precautions. The notice shall be provided by including the statement "Blood and Body Fluid Precautions" on the provisional report-of-death form as prescribed by the Cabinet for Health and Family Services. Lack of this notice shall not relieve any embalmer or funeral director from taking universal blood and body fluid precautions as are recommended by the United States Department of Health and Human Services, Centers for Disease Control for Morticians' Services. No embalmer or funeral director shall charge more for embalming the remains of a person with a communicable disease which requires blood and body fluid precautions than the price for embalming services listed on the price list funeral providers are required to maintain and provide to consumers pursuant to 16 C.F.R. Sec. 453.2 (1988).
- (9) A burial-transit permit for the final disposition issued under the law of another state which accompanies a dead body or fetus brought into the Commonwealth shall be the authority for final disposition of the body or fetus in the Commonwealth and may be accepted in lieu of a certificate of death. There shall be noted on the face of the

record made for return to the local registrar that the body was shipped to Kentucky for interment and the actual place of death.

- (10) Nothing in this section shall be construed to delay, beyond a reasonable time, the interment or other disposition of a body unless the services of the coroner or the health officer are required or the Department for Public Health deems it necessary for the protection of the public health. If compliance with this section would result in unreasonable delay in the disposition of the body the funeral director, or person acting as such, shall file with the local registrar or deputy registrar prior to interment a provisional certificate of death which shall contain the name, date, and place of death of the deceased, the name of the medical certifier, and an agreement to furnish within ten (10) days a complete and satisfactory certificate of death.
- (11) No sexton or other person in charge of any place in which interment or other disposition of dead bodies is made shall inter or allow interment or other disposition of a dead body or fetus unless it is accompanied by a copy of the provisional certificate of death. The sexton, or if there is no sexton, the funeral director, or person acting as such, shall enter on the provisional certificate over his signature, the date, place, and manner of final disposition and file the certificate within five (5) days with the local registrar.
- (12) Authorization for disinterment, transportation, and reinterment or other disposition shall be required prior to disinterment of any human remains. The authorization shall be issued by the state registrar upon proper application. The provisions of this subsection shall apply to all manners of disposition except cremation and without regard for the time and place of death. The provisions of KRS 381.765 shall not apply to remains removed for scientific study and the advancement of knowledge.
- (13) After a death certificate has been on file for five (5) years, it may not be changed in any manner except upon order of a court. Prior to that time, requests for corrections, amendments, or additions shall be accompanied by prima facie evidence which supports the requested change.

Section 2. KRS 525.055 is amended to read as follows:

- (1) A person is guilty of disorderly conduct in the first degree when he or she:
 - (a) In a public place and with intent to cause public inconvenience, annoyance, or alarm, or wantonly creating a risk thereof:
 - 1. Engages in fighting or in violent, tumultuous, or threatening behavior;
 - 2. Makes unreasonable noise; or
 - 3. Creates a hazardous or physically offensive condition by any act that serves no legitimate purpose; and
 - (b) Acts in a way described in paragraph (a) of this subsection within three hundred (300) feet of a:
 - 1. Cemetery during a funeral or burial;
 - 2. Funeral home during the viewing of a deceased person;
 - 3. Funeral procession;
 - 4. Funeral or memorial service; or
 - 5. Building in which a funeral or memorial service is being conducted; and
 - (c) ***Acts in a way described in paragraph (a) of this subsection at any point in time between one (1) hour prior to the commencement of an event specified in paragraph (b) of this subsection and one (1) hour following its conclusion; and***
 - (d) Knows that he or she is within three hundred (300) feet of an occasion described in paragraph (b) of this subsection.
- (2) Disorderly conduct in the first degree is a Class A misdemeanor.

Section 3. KRS 525.155 is amended to read as follows:

- (1) A person is guilty of interference with a funeral when, ***at any point in time between one (1) hour prior to the commencement of an event specified in paragraph (a) of this subsection and one (1) hour following its conclusion,*** he or she ~~at any time on any day~~:

- ~~(a) blocks, impedes, inhibits, or in any other manner obstructs or interferes with access into or from any building or parking lot of a building in which a funeral, wake, memorial service, or burial is being conducted, or any burial plot or the parking lot of the cemetery in which a funeral, wake, memorial service, or burial is being conducted;~~
 - ~~(b) Congregates, pickets, patrols, demonstrates, or enters on that portion of a public right of way or private property that is within three hundred (300) feet of an event specified in paragraph (a) of this subsection; or~~
 - ~~(c) Without authorization from the family of the deceased or person conducting the service, during a funeral, wake, memorial service, or burial:

 - ~~1. Sings, chants, whistles, shouts, yells, or uses a bullhorn, auto horn, sound amplification equipment, or other sounds or images observable to or within earshot of participants in the funeral, wake, memorial service, or burial; or~~
 - ~~2. Distributes literature or any other item.~~~~
- (2) Interference with a funeral is a Class B misdemeanor.

Approved March 23, 2007.

CHAPTER 108

(SB 126)

AN ACT relating to peace officers.

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

Section 1. KRS 431.007 is amended to read as follows:

- (1) **A peace officer, certified pursuant to KRS 15.380 to 15.404, who is**~~[policeman]~~ directly employed as a ~~full-time~~ police officer by a Kentucky city, county, or urban-county government and whose department meets the requirements of KRS 15.440 and a sheriff, or ~~full-time~~ deputy sheriff **who has been certified pursuant to KRS 15.380 to 15.404**, who is officially requested by a law enforcement agency in another county in Kentucky to assist in any matter within the jurisdiction of the requesting agency shall possess, while responding to and for the duration of the matter for which the request was made, the same powers of arrest in the requesting county as he possesses in the county in which he is a police officer.
- (2) The provisions of this section shall not:
 - (a) Authorize assistance in any labor dispute or strike;
 - (b) Authorize assistance by a constable or deputy constable;
 - (c) Authorize assistance by a special local peace officer; or
 - (d) Authorize assistance by a special deputy sheriff.

Approved April 5, 2007.

CHAPTER 109

(HB 228)

AN ACT relating to consumer protection.

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

Section 1. KRS 367.374 is amended to read as follows:

- (1) (a) When a Condition Red has been declared by the United States Department of Homeland Security under the Homeland Security Advisory System or the Governor has declared a state of emergency under KRS 39A.100, the Governor may implement this section **by executive order for a period of thirty (30) days**

from notification of implementation, as required by KRS 367.376. The order implementing this section shall be limited to the geographical area indicated in the declaration of emergency~~[the duration of the declaration and the area for which the declaration was issued].~~

- (b) No person shall sell, rent, or offer to sell or rent, regardless of whether an actual sale or rental occurs, a good or service listed in this paragraph or any repair or reconstruction service for a price which is grossly in excess of the price prior to the declaration and unrelated to any increased cost to the seller. Goods and services to which this section applies are:
 - 1. Consumer food items;
 - 2. Goods or services used for emergency cleanup;
 - 3. Emergency supplies;
 - 4. Medical supplies;
 - 5. Home heating oil;
 - 6. Building materials;
 - 7. Housing;
 - 8. Transportation, freight, and storage services; and
 - 9. Gasoline or other motor fuels.
 - (c) A person who increases a price does not violate this subsection if the price increase is attributable to an additional cost imposed by a supplier of a good or other costs of providing the good or service, including an additional cost for labor or materials used to provide a service.
- (2) The provisions of this section may be extended for an additional period, not to exceed thirty (30) days, by the Governor if necessary to protect the lives, property, or welfare of the citizens.
 - (3) If a person sold or rented a good or service listed in subsection (1) of this section at a reduced price in the thirty (30) days prior to the Governor's implementation of this section, the price at which that person usually sells or rents the good or service in the area for which the declaration was issued shall be used in determining if the person is in violation of this section.
 - (4) If a person did not sell or rent or offer to sell or rent a good or service listed in subsection (1) of this section prior to the Governor's implementation of this section, the price at which a good or service was generally available in the area for which the declaration was issued shall be used in determining if the person is in violation of this section.

Approved April 5, 2007.

CHAPTER 110

(HB 216)

AN ACT relating to fish and wildlife resources.

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

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

In addition to the game permits issued under KRS 150.175, the commission may promulgate administrative regulations allowing the issuance of cooperator permits to individuals or entities who enroll land with the department for public hunting and meet all applicable regulatory requirements. An individual or entity that receives a cooperative permit issued under this section may sell or transfer the permit.

Section 2. KRS 150.177 is amended to read as follows:

In addition to the game permits issued under KRS 150.175, the commission may issue a special permit to an incorporated nonprofit wildlife conservation organization. The commission shall promulgate administrative regulations governing the number of special permits to be issued per year per species for which a game permit is required.~~[The commission may also promulgate regulations allowing the issuance of cooperator permits to individuals or entities who enroll land with the department for public hunting and meet all applicable regulatory~~

~~requirements.] An organization [or cooperator] that receives a special permit issued under this section may sell and transfer the permit if all proceeds of the sale are used in Kentucky for wildlife management.~~

Approved April 5, 2007.

CHAPTER 111

(HB 426)

AN ACT relating to supersedeas bonds.

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

Section 1. KRS 411.187 is amended to read as follows:

- (1) ***In any civil action brought under any legal theory, the amount of a supersedeas bond necessary to stay execution of a judgment granting legal, equitable, or any other relief during the entire course of all appeals or discretionary reviews of the judgment by all appellate courts shall be set in accordance with applicable law, except that the total amount of the supersedeas bonds that are required collectively of all appellants during the appeal of a civil action may not exceed one hundred million dollars (\$100,000,000) in the aggregate, regardless of the amount of the judgment that is appealed.***~~[If the appellee in a civil action obtains a judgment for punitive or exemplary damages and the appellant seeks a stay of enforcement of the judgment in order to obtain review by an appellate court, the supersedeas bond for the punitive damages portion of the judgment on appeal shall not exceed one hundred million dollars (\$100,000,000)].~~
- (2) If the appellee proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond requirement has been limited, is purposefully dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding ultimate payment of the ~~[punitive damages]~~ judgment, the limitation granted under subsection (1) of this section shall be rescinded and ***a court may require the appellant to post a bond in an amount up to***~~[the bond requirement shall be reinstated for]~~ the full amount of the judgment ***pursuant to the Kentucky Rules of Civil Procedure.***

Section 2. Section 1 of this Act shall apply to all civil actions pending on the effective date of this Act.

Approved April 5, 2007.

CHAPTER 112

(HB 380)

AN ACT relating to high school athletics.

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

Section 1. KRS 156.070 is amended to read as follows:

- (1) The Kentucky Board of Education shall have the management and control of the common schools and all programs operated in these schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.
- (2) The Kentucky Board of Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be approved by the board, and provided further that any administrative hearing conducted by the designated managing organization or agency shall be conducted in accordance with KRS Chapter 13B.
 - (a) The state board or its designated agency shall assure through promulgation of administrative regulations that if a secondary school sponsors or intends to sponsor an athletic activity or sport that is similar to a sport for which National Collegiate Athletic Association members offer an athletic scholarship, the school shall sponsor the athletic activity or sport for which a scholarship is offered. The administrative regulations shall specify which athletic activities are similar to sports for which National Collegiate Athletic Association members offer scholarships.

- (b) Beginning with the 2003-2004 school year, the state board shall require any agency or organization designated by the state board to manage interscholastic athletics to adopt bylaws that establish as members of the agency's or organization's board of control one (1) representative of nonpublic member schools who is elected by the nonpublic school members of the agency or organization from regions one (1) through eight (8) and one (1) representative of nonpublic member schools who is elected by the nonpublic member schools of the agency or organization from regions nine (9) through sixteen (16). The nonpublic school representatives on the board of control shall not be from classification A1 or D1 schools. Following initial election of these nonpublic school representatives to the agency's or organization's board of control, terms of the nonpublic school representatives shall be staggered so that only one (1) nonpublic school member is elected in each even-numbered year.
 - (c) The state board or any agency designated by the state board to manage interscholastic athletics shall not promulgate rules, administrative regulations, or bylaws that prohibit pupils in grades seven (7) to eight (8) from participating in any high school sports except for high school varsity soccer and football, or from participating on more than one (1) school-sponsored team at the same time in the same sport. The Kentucky Board of Education, or an agency designated by the board to manage interscholastic athletics, may promulgate administrative regulations restricting, limiting, or prohibiting participation in high school varsity soccer and football for students who have not successfully completed the eighth grade.
 - (d) Every local board of education shall require an annual medical examination performed and signed by a physician, physician assistant, advanced registered nurse practitioner, or chiropractor, if performed within the professional's scope of practice, for each student seeking eligibility to participate in any high school athletic activity or sport. The Kentucky Board of Education or any organization or agency designated by the state board to manage interscholastic athletics shall not promulgate administrative regulations or adopt any policies or bylaws that are contrary to the provisions of this paragraph.
 - (e) Any student who turns nineteen (19) years of age prior to August 1 shall not be eligible for high school athletics in Kentucky. Any student who turns nineteen (19) years of age on or after August 1 shall remain eligible for that school year only. ***An exception to the provisions of this paragraph shall be made and the student shall be eligible for high school athletics in Kentucky if the student:***
 - 1. ***Qualified for exceptional children services and had an individual education program developed by an admissions and release committee (ARC) while the student was enrolled in the primary school program;***
 - 2. ***Was retained in the primary school program because of an ARC committee recommendation; and***
 - 3. ***Has not completed four (4) consecutive years or eight (8) consecutive semesters of eligibility following initial promotion from grade eight (8) to grade nine (9).***
 - (f) If the state board or any agency designated by the state board to manage interscholastic athletics promulgates administrative regulations that permit a school district to employ or assign nonteaching personnel to serve in a coaching position, those administrative regulations shall apply to all sports and sports activities, including basketball and football. The administrative regulations shall give preference to the hiring or assignment of certified personnel over nonteaching personnel in coaching positions.
- (3) (a) The Kentucky Board of Education is hereby authorized to lease from the State Property and Buildings Commission, or others, whether public or private, any lands, buildings, structures, installations, and facilities suitable for use in establishing and furthering television and related facilities as an aid or supplement to classroom instruction, throughout the Commonwealth, and for incidental use in any other proper public functions. The lease may be for any initial term commencing with the date of the lease and ending with the next ensuing June 30, which is the close of the then-current fiscal biennium of the Commonwealth, with exclusive options in favor of the board to renew the same for successive ensuing bienniums, July 1 in each even year to June 30 in the next ensuing even year; and the rentals may be fixed at the sums in each biennium, if renewed, sufficient to enable the State Property and Buildings Commission to pay therefrom the maturing principal of and interest on, and provide reserves for, any revenue bonds which the State Property and Buildings Commission may determine to be necessary and sufficient, in agreement with the board, to provide the cost of acquiring the television and related facilities, with appurtenances, and costs as may be incident to the issuance of the bonds.

- (b) Each option of the Kentucky Board of Education to renew the lease for a succeeding biennial term may be exercised at any time after the adjournment of the session of the General Assembly at which appropriations shall have been made for the operation of the state government for such succeeding biennial term, by notifying the State Property and Buildings Commission in writing, signed by the chief state school officer, and delivered to the secretary of the Finance and Administration Cabinet as a member of the commission. The option shall be deemed automatically exercised, and the lease automatically renewed for the succeeding biennium, effective on the first day thereof, unless a written notice of the board's election not to renew shall have been delivered in the office of the secretary of the Finance and Administration Cabinet before the close of business on the last working day in April immediately preceding the beginning of the succeeding biennium.
- (c) The Kentucky Board of Education shall not itself operate leased television facilities, or undertake the preparation of the educational presentations or films to be transmitted thereby, but may enter into one (1) or more contracts to provide therefor, with any public agency and instrumentality of the Commonwealth having, or able to provide, a staff with proper technical qualifications, upon which agency and instrumentality the board, through the chief state school officer and the Department of Education, is represented in such manner as to coordinate matters of curriculum with the curricula prescribed for the public schools of the Commonwealth. Any contract for the operation of the leased television or related facilities may permit limited and special uses of the television or related facilities for other programs in the public interest, subject to the reasonable terms and conditions as the board and the operating agency and instrumentality may agree upon; but any contract shall affirmatively forbid the use of the television or related facilities, at any time or in any manner, in the dissemination of political propaganda or in furtherance of the interest of any political party or candidate for public office, or for commercial advertising. No lease between the board and the State Property and Buildings Commission shall bind the board to pay rentals for more than one (1) fiscal biennium at a time, subject to the aforesaid renewal options. The board may receive and may apply to rental payments under any lease and to the cost of providing for the operation of the television or related facilities not only appropriations which may be made to it from state funds, from time to time, but also contributions, gifts, matching funds, devises, and bequests from any source, whether federal or state, and whether public or private, so long as the same are not conditioned upon any improper use of the television or related facilities in a manner inconsistent with the provisions of this subsection.
- (4) The state board may, on the recommendation and with the advice of the chief state school officer, prescribe, print, publish, and distribute at public expense such administrative regulations, courses of study, curriculums, bulletins, programs, outlines, reports, and placards as each deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. All administrative regulations published or distributed by the board shall be enclosed in a booklet or binder on which the words "informational copy" shall be clearly stamped or printed.
- (5) Upon the recommendation of the chief state school officer or his designee, the state board shall establish policy or act on all matters relating to programs, services, publications, capital construction and facility renovation, equipment, litigation, contracts, budgets, and all other matters which are the administrative responsibility of the Department of Education.

Approved April 5, 2007.

CHAPTER 113

(SB 130)

AN ACT relating to employee interest in contracts between a public postsecondary education institution and a business.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) ***For the purposes of this section, "business" has the same meaning as defined in KRS 11A.010.***

- (2) *The governing board of each public postsecondary education institution may adopt regulations establishing the conditions under which and the procedures whereby the board may approve a specific instance of an employee having an interest in a contract between the institution and a business.*
- (3) *Each governing board shall forward, as soon as is practicable, a copy of the regulations it adopts under provisions of this section to the Legislative Research Commission. A board shall also forward any subsequent changes to the regulations to the Commission.*

Section 2. KRS 164.131 is amended to read as follows:

- (1)
 - (a) The government of the University of Kentucky is vested in a board of trustees appointed for a term set by law pursuant to Section 23 of the Constitution of Kentucky.
 - (b) All persons appointed after May 30, 1997, shall be required to attend and complete an orientation program prescribed by the council under KRS 164.020, as a condition of their service.
 - (c) The board shall periodically evaluate the institution's progress in implementing its missions, goals, and objectives to conform to the strategic agenda. Officers and officials shall be held accountable for the status of the institution's progress.
 - (d) Board members may be removed by the Governor for cause, which shall include neglect of duty or malfeasance in office, after being afforded a hearing with counsel before the council and a finding of fact by the council.
 - (e) The board shall consist of sixteen (16) members appointed by the Governor, two (2) members of the faculty of the University of Kentucky, one (1) member of the University of Kentucky nonteaching personnel, and one (1) member of the student body of the University of Kentucky. The voting members of the board shall select a chairperson annually.
- (2)
 - (a) The terms of the appointed members shall be for six (6) years and until their successors are appointed and qualified; except the initial appointments shall be as follows:
 - 1. Two (2) members shall serve one (1) year terms;
 - 2. Two (2) members shall serve two (2) year terms, one (1) of whom shall be a graduate of the university, selected from a list of three (3) names submitted by the alumni of the university according to rules established by the board of trustees;
 - 3. Three (3) members shall serve three (3) year terms;
 - 4. Three (3) members shall serve four (4) year terms, one (1) of whom shall be a graduate of the university, selected as under subparagraph 2. of this subsection;
 - 5. Three (3) members shall serve five (5) year terms; and
 - 6. Three (3) members shall serve six (6) year terms, one (1) of whom shall be a graduate of the university, selected as under subparagraph 2. of this subsection.
 - (b)
 - 1. Three (3) of the appointments shall be graduates of the university and may include one (1) graduate of the institution who resides outside the Commonwealth;
 - 2. Three (3) shall be representative of agricultural interests; and
 - 3. Ten (10) shall be other distinguished citizens representative of the learned professions and may include one (1) who resides outside of Kentucky.
 - (c) The Governor shall make the appointments so as to reflect proportional representation of the two (2) leading political parties of the Commonwealth based on the state's voter registration and to reflect no less than proportional representation of the minority racial composition of the Commonwealth.
 - (d) Appointments to fill vacancies shall be made for the unexpired term in the same manner as provided for the original appointments.
- (3) The two (2) University of Kentucky faculty members shall be of the rank of assistant professor or above. They shall be elected by secret ballot by all University of Kentucky faculty members of the rank of assistant professor or above. Faculty members shall serve for terms of three (3) years and until their successors are elected and qualified. Faculty members shall be eligible for reelection, but they shall be ineligible to continue

to serve as members of the board of trustees if they cease to be members of the faculty of the university. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for original elections.

- (4) The nonteaching personnel member shall be any full-time staff member, excluding the president, vice-presidents, academic deans, and academic department chairpersons. The staff member shall represent all nonteaching university employees including, but not limited to, building facilities and clerical personnel. The staff member shall be elected by secret ballot by the nonteaching employees. The staff member shall serve a term of three (3) years and until a successor is elected and qualified. The staff member shall be eligible for reelection, but a staff member who ceases being an employee of the university shall not be eligible to continue to serve as a member of the board. Elections to fill vacancies shall be for the unexpired term and shall be held in the same manner as provided for the original election.
- (5) The student member shall be the president of the student body of the university during the appropriate academic year and may be an out-of-state resident if applicable. If the student member does not maintain his position as student body president or his status as a full-time student at any time during that academic year, a special election shall be held to select a full-time student. The student member shall serve for a term of one (1) year beginning with the first meeting of the fiscal year which contains that academic year.
- (6) The number of student and employee trustees of the University of Kentucky elected to the board shall not exceed four (4).
- (7) *Unless specifically approved by the board of trustees under the provisions of Section 1 of this Act*, no member of the administrative staff of the university shall be directly or indirectly interested in any contract with the university for the sale of property, materials, supplies, equipment, or services, with exception of compensation to the two (2) faculty members, and the one (1) nonteaching personnel member.
- (8) New appointees of the board shall not serve more than two (2) consecutive terms. Board members serving as of May 30, 1997, may be reappointed at the end of their existing terms and may serve two (2) additional full consecutive terms.

Section 3. KRS 164.390 is amended to read as follows:

Unless specifically approved by the governing board of an institution under the provisions of Section 1 of this Act, no president, professor, teacher, member of the executive council or other officer or employee shall be interested in any contract or purchase for the building or repairing of any structure or furnishing of any supplies for the use of a university or college.

Section 4. KRS 164.821 is amended to read as follows:

- (1) The government of the University of Louisville is vested in a board of trustees appointed for a term set by law pursuant to Section 23 of the Constitution of Kentucky. The board shall consist of seventeen (17) members appointed by the Governor; one (1) member of the teaching faculty of the University of Louisville who shall be the chief executive of the ranking unit of faculty government; a member of the permanent staff of the University of Louisville who shall be the chief executive of the staff senate; and a student member who shall be the president of the student body during the appropriate academic year.
 - (a) All persons appointed after May 30, 1997, shall be required to attend and complete an orientation program prescribed by the council under KRS 164.020 as a condition of their service.
 - (b) Board members may be removed by the Governor for cause, which shall include neglect of duty or malfeasance in office, after being afforded a hearing with counsel before the Council on Postsecondary Education and a finding of fact by the council.
 - (c) New appointees to the board shall not serve more than two (2) consecutive terms. Board members serving as of May 30, 1997, may be reappointed at the end of their existing terms and may serve two (2) additional full consecutive terms.
- (2) If the student member does not maintain his position as student body president or his status as a full-time student at any time during that academic year a special election shall be held to select a full-time student member. The student member shall serve for a term of one (1) year beginning with the first meeting of the fiscal year which contains that academic year.
- (3) The faculty member, staff member, and student body member shall cease to be eligible for membership on the board of trustees upon termination of their respective relationships with the university, and vacancies occurring

for this reason shall be filled for the remainder of the respective terms in the same manner. The seventeen (17) citizen members of the board shall annually elect one (1) of their number to serve as chairperson of the board.

- (4) The gubernatorial appointments shall serve a term of six (6) years and until their successors are appointed and qualified, except the initial terms shall be as follows:
 - (a) Two (2) members shall serve one (1) year terms;
 - (b) Three (3) members shall serve two (2) year terms;
 - (c) Three (3) members shall serve three (3) year terms, one (1) of whom shall be a graduate of the university, selected from a list of three (3) names submitted by the alumni of the university in the manner and according to rules prescribed by the board of trustees;
 - (d) Three (3) members shall serve four (4) year terms;
 - (e) Three (3) members shall serve five (5) year terms; and
 - (f) Three (3) members shall serve six (6) year terms, one (1) of whom shall be a graduate of the university, selected as under paragraph (c) of this subsection.
- (5) The Governor shall make his at-large appointments so as to divide the citizen representation upon the board to reflect proportional representation of the two (2) leading political parties in the Commonwealth based on the state's voter registration and shall reflect no less than proportional representation of the minority racial composition of the Commonwealth. The membership may include one (1) graduate of the institution who resides outside the Commonwealth, but he shall not be reimbursed for out-of-state travel.
- (6) Vacancies among the citizen members of the board occurring by death, resignation, or any other cause shall be filled by appointments made by the Governor for the expiration of the term, subject to the qualifications set forth in this section.
- (7) *Unless specifically approved by the board of trustees under the provisions of Section 1 of this Act*, no member of the teaching or administrative staff of the university shall be directly or indirectly interested in any contract with the university for the sale of property, materials, supplies, equipment, or services, with the exception of compensation to the faculty, staff and student members.

Approved April 5, 2007.

CHAPTER 114

(HB 448)

AN ACT relating to special districts.

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

Section 1. KRS 65.065 is amended to read as follows:

- (1) The governing body of each district shall annually prepare a budget and, as appropriate, shall classify budget units in the same fashion as county budgets are classified in accordance with KRS 68.240(2) to (5). The state local finance officer shall prepare standard budget forms for district use and shall furnish them to county clerks for distribution to district officers. No moneys shall be expended from any funds or any sources, except in accordance with the budget which has been filed with the fiscal court to be available for public inspection. No budget of a district shall become effective until filed with the fiscal court of the county in which the district is located for submission to the Department for Local Government. For those districts with multicounty jurisdictions, the district shall file a copy with each of the fiscal courts within the jurisdiction of the district for their review. If the budget is not filed with the fiscal court at least thirty (30) days prior to the start of the district fiscal year, the fiscal court shall immediately notify the county attorney. The county attorney shall then notify the governing board of the special district of the noncompliance and then proceed with any steps necessary to prevent the expenditure of funds by the special district until the district is in compliance.
- (2) The governing body of each district which for the year in question receives from all sources or expends for all purposes less than *seven hundred fifty thousand dollars (\$750,000)* ~~four hundred thousand dollars (\$400,000)~~ shall annually prepare a financial statement, except that once every four (4) years the district's governing body shall provide for the performance of an audit as provided in subsection (4) of this section.

- (3) The governing body of each district which for the year in question receives from all sources or expends for all purposes ***seven hundred fifty thousand dollars (\$750,000)***~~four hundred thousand dollars (\$400,000)~~ or more shall provide for the performance of an annual audit as provided in subsection (4) of this section.
- (4) To provide for the performance of an audit, the governing body of a district shall employ an independent certified public accountant or contract with the Auditor of Public Accounts to perform an audit of the funds in the district budget. The audit shall conform to:
 - (a) Generally-accepted governmental auditing standards, which means those standards for audits of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States; and
 - (b) Additional procedures and reporting requirements as may be required by the Auditor of Public Accounts. A unit of government furnishing funds directly to a district may require additional audits at its own expense. Upon request, the State Auditor of Public Accounts may review the final report and all related work papers and documents of the independent certified public accountant relating to the audit. If a district is required by law to audit its funds more often than is required by this section, it shall perform those audits and may submit them in lieu of the requirements of this section, if the audits meet the requirements of this subsection.
- (5) The provisions of subsection (2) of this section shall not apply to any district that is required by law to annually submit a financial report to an agency of state government. The districts shall annually submit a copy of their financial report to the county judge/executive and to the state local finance officer and once every four (4) years provide for the performance of an audit as provided in subsection (4) of this section.
- (6) Any resident of the district may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the governing body of the district has violated the provisions of this section, shall order the district to comply with the provisions. The Circuit Court, in its discretion, may allow the prevailing party, other than the district, a reasonable attorney's fee and court costs, to be paid from the district's treasury.

Section 2. KRS 262.280 is amended to read as follows:

- (1) The board shall provide for the keeping of a full and accurate record of all its proceedings and of all resolutions, regulations and orders issued or adopted by it.
- (2) ***An audit of the accounts of each district shall take place once every four (4) years unless the district receives or expends seven hundred fifty thousand dollars (\$750,000) or more in any year, in which case the district shall provide for the performance of an annual audit. The audit shall be conducted in accordance with audit standards and requirements stipulated in KRS 65.065(4).***~~The board shall provide for an annual audit of the accounts of its receipts and disbursement of its funds.~~
- (3) Upon request of the commission, the board shall furnish the commission with copies of ordinances, regulations, orders, contracts, forms and other documents adopted or employed by the board and any other information requested by the commission concerning the board's activities.

Section 3. KRS 262.763 is amended to read as follows:

- (1) An audit of the accounts of each watershed conservancy district shall take place once every four (4) years unless the district receives or expends ***seven hundred fifty thousand dollars (\$750,000)***~~four hundred thousand dollars (\$400,000)~~ or more in any year, in which case the district shall provide for the performance of an annual audit. ***The audit shall be conducted in accordance with audit standards and requirements stipulated in KRS 65.065(4).*** The board of directors of each watershed conservancy district shall select to make the audit certified public accountants who have no personal interest in the financial affairs of the board of directors or in any of its officers or employees.
- (2) Immediately upon completion of each audit, the accountant shall prepare a report of his findings and recommendations. This report shall be to the board of directors and in such number of copies as specified by the board of directors. Immediately following receipt of the audit report, the board of directors shall cause a summary of the report or the text of the report to be advertised for the district by publication in a newspaper of general circulation in the area encompassed by the watershed conservancy district. The actual expense of any audit authorized under this section shall be borne by the watershed conservancy district.

- (3) The board of directors shall forward a copy of the newspaper in which the audit report appeared to the State Auditor of Public Accounts.

Approved April 5, 2007.

CHAPTER 115

(HB 430)

AN ACT relating to consumer telemarketing.

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

Section 1. KRS 367.46951 is amended to read as follows:

As used in KRS 367.46951 to 367.46999 and 367.990, unless the context otherwise requires:

- (1) "Telephone solicitation" means:
- (a) A live or recorded communication sent by a telephone or message sent by a facsimile machine to a residential, mobile, or telephone paging device telephone number, including a call made by an automatic dialing or recorded message device, for the purpose of:
 - 1. Soliciting a sale of consumer goods or services, offering an investment, business, or employment opportunity, or offering a consumer loan to the person called;
 - 2. Obtaining information that will or may be used for the solicitation of a sale of consumer goods or services, the offering of an investment, business, or employment opportunity, or the offering of a consumer loan to the person called;
 - 3. Offering the person called a prize, gift, or anything else of value, if payment of money or other consideration is required in order to receive the prize or gift, including the purchase of other merchandise or services or the payment of any processing fees, delivery charges, shipping and handling fees, or other fees or charges; or
 - 4. Offering the person called a prize, gift, or other incentive to attend a sales presentation for consumer goods or services, an investment or business opportunity, or a consumer loan; or
 - (b) A live or recorded communication sent by telephone, facsimile machine, mobile telephone, or telephone paging device in response to inquiries generated by unrequested notifications sent by the merchant to persons who have not previously purchased goods or services from the merchant or telemarketer or who have not previously requested credit from the merchant, to a prospective purchaser if the merchant or telemarketer represents or implies to the recipient of the notification that any of the following applies:
 - 1. That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification;
 - 2. That the recipient will receive a prize or gift if the recipient calls the merchant or telemarketer; or
 - 3. That if the recipient buys one (1) or more items from the merchant or telemarketer, the recipient will also receive additional or other items of the same or a different type at no additional cost or for less than the regular price of the items;
- (2) "Telephone solicitation" does not mean the following:
- (a) A telephone call made in response to an express request of a person called, unless the request was made during a prior telephone solicitation;
 - (b) A telephone call made to the debtor or a party to the contract in connection with the payment or performance of an existing debt or contract, the payment or performance of which has not been completed at the time of the call;
 - (c) A telephone call to any person with whom the telemarketer or merchant has a prior or existing business relationship, including but not limited to the solicitation of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made;

- (d) A telephone call made by the following:
1. A merchant or telemarketer located in Kentucky to a location outside of the Commonwealth of Kentucky;
 2. A telephone call made by one (1) merchant to another;
- (3) "Consumer goods or services" means goods, services, or interests in real property used by natural persons primarily for personal, family, or household purposes;
 - (4) "Consumer loan" means any extension of credit, including credit cards and other forms of revolving credit, to a natural person primarily for the purposes of purchasing consumer goods or services or for paying existing personal, family, or household debts;
 - (5) "Consumer" means a natural person who receives a telephone solicitation;
 - (6) "Legal name of the merchant" means the real name of the merchant, as defined in KRS 365.015(1), or the assumed name of the merchant for which all proper certificates have been filed pursuant to KRS 365.015;
 - (7) "Merchant" means the individual or business entity offering the consumer goods or services, an investment, business, or employment opportunity, or a consumer loan;
 - (8) "Caller" or "sales person" means the individual making the call or operating the automatic dialing or recorded message device and causing the call to be made;
 - (9) "Division" means the Consumer Protection Division of the Office of the Attorney General;
 - (10) "Automated calling equipment" means any device or combination of devices used to select or dial telephone numbers and to deliver recorded messages to those numbers without the use of a live operator;
 - (11) "Telemarketer" means any person who under contract with a merchant or in connection with a telephone solicitation initiates or receives telephone calls to or from a consumer of goods and services. A telemarketer includes but is not limited to any such person that is an owner, operator, officer, director, or partner to the management activities of a business;
 - (12) "Publicly traded corporation" means an issuer or subsidiary of an issuer that has a class of securities which is:
 - (a) Subject to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. sec. 78l) and which is registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g)(2) of that section;
 - (b) Listed on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ National Market System; or
 - (c) A reported security within the meaning of subparagraph (4) of Regulation Section 240.11Aa3-1.(a) under the Securities Exchange Act of 1934. A subsidiary of an issuer that qualifies for exemption under this paragraph shall not itself be exempt unless at least sixty percent (60%) of the voting power of its shares is owned by the qualifying issuer;
 - (13) "Telemarketing company" means a company whose primary business is to engage in telephone solicitation; and
 - (14) "Zero call~~[-] list~~" means ***the national Do Not Call Registry maintained by the United States Federal Trade Commission***~~[a list]~~ containing the ***residential or wireless*** telephone numbers of the individuals that indicate their preference not to receive telephone solicitations.

Section 2. KRS 367.46955 is amended to read as follows:

It is a prohibited telephone solicitation act or practice and a violation of KRS 367.46951 to 367.46999 for any person making a telephone solicitation to engage in the following conduct:

- (1) Advertising or representing that registration as a telemarketer equals an endorsement or approval by any government or governmental agency;
- (2) Requesting a fee in advance to remove derogatory information from or improve a person's credit history or credit record;

- (3) Requesting or receiving a payment in advance from a person to recover or otherwise aid in the return of money or any other item lost by the consumer in a prior telephone solicitation transaction;
- (4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the telemarketing company has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;
- (5) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, or bond or other account without the consumer's express written authorization, or charging a credit card account or making electronic transfer of funds except in conformity with KRS 367.46963;
- (6) Procuring the services of any professional delivery, courier, or other pickup service to obtain immediate receipt or possession of a consumer's payment, unless the goods are delivered with the opportunity to inspect before any payment is collected;
- (7) Assisting, supporting, or providing substantial assistance to any telemarketer when the telemarketing company knew or should have known that the telemarketer was engaged in any act or practice prohibited under this section;
- (8) Making a telephone solicitation to anyone under eighteen (18) years of age. When making a telephone solicitation the telemarketer shall inquire as to whether the person is eighteen (18) years of age or older and the answer shall be presumed to be correct;
- (9) Utilizing any method to block or otherwise circumvent the use of a caller identification service when placing an unsolicited telephone solicitation call;
- (10) Directing or permitting employees to use a fictitious name or not to use their name while making a telephone solicitation;
- (11) Threatening, intimidating, or using profane or obscene language;
- (12) Causing the telephone to ring more than thirty (30) seconds in an intended telephone solicitation;
- (13) Engaging any person repeatedly or continuously with behavior a reasonable person would deem to be annoying, abusive, or harassing;
- (14) Initiating a telephone solicitation call to a person, when that person has stated previously that he or she does not wish to receive solicitation calls from that seller;
- (15) ~~[(a)] Making or causing to be made an unsolicited telephone solicitation call if the residential number for that telephone appears in the current publication of the ***national Do Not Call Registry*** [zero call list] maintained by the ***United States Federal Trade Commission*** [Office of the Attorney General, Division of Consumer Protection. Any holder of a residential telephone number may notify the division and be placed on a zero call list indicating the wish not to receive unsolicited telephone solicitation calls by notification to the division. The telephone numbers of persons requesting to be on the zero call list shall remain on the list until the person rescinds his or her name from the list.~~
~~[(b)] The zero call list shall be updated, published, and distributed on a quarterly basis in electronic and hard copy and may be made available in other formats at the discretion of the division. After the publication of the list each quarter each telemarketing company, telemarketer, and merchant shall be deemed to be on notice not to solicit any person whose telephone number appears on the list. The list shall be made available to requesters either on a statewide or county by county basis];~~
- (16) Making telephone solicitations to a person's residence at any time other than between 10 a.m. - 9 p.m. local time, at the called person's location;
- (17) Selling or making available for economic gain any information revealed during a telephone solicitation without the express written consent of the consumer;
- (18) Making a telephone solicitation to any residential telephone using an artificial or prerecorded voice to deliver a message, unless the call is initiated for emergency purposes by schools regulated by the Kentucky Department of Education or the call is made with the prior express consent of the called party; or
- (19) Engaging in any unfair, false, misleading, or deceptive practice or act as part of a telephone solicitation.

Section 3. KRS 367.46971 is amended to read as follows:

- (1) At least ten (10) days prior to doing business in this state, a telemarketing company shall **register**~~[file]~~ with the division **by filing** the information described below and **paying**~~[pay]~~ a filing fee of three hundred dollars (\$300). A telemarketing company shall be deemed to do business in this state if the telemarketing company solicits prospective purchasers from locations in this state or solicits prospective purchasers who are located in this state. The information required by this section shall be submitted on a form provided by the Attorney General and shall be verified by a declaration signed by each principal of the telemarketing company, under penalty of perjury. The declaration shall specify the date and location of signing. Information submitted pursuant to KRS 367.46951 to 367.46999 shall be clearly identified and appended to the filing.
- (2) Registration of a telemarketing company shall be valid for one (1) year from the effective date thereof and may be renewed annually by making the filing required by this section and paying a filing fee of fifty dollars (\$50).
- (3) If, prior to expiration of a telemarketing company's annual registration, there is a material change in the information required by KRS 367.46951 to 367.46999, the telemarketing company shall, within ten (10) days, file an addendum updating the information with the division. However, changes in salespersons soliciting on behalf of a telemarketing company shall be updated by filing addenda, if necessary, in quarterly intervals computed from the effective date of registration. The addendum shall include the required information for all salespersons currently soliciting or having solicited on behalf of the telemarketing company at any time during the period between the filing of the registration, or the last addendum, and the current addendum, and shall include information on salespersons no longer soliciting for the telemarketing company as of the date of the filing of the current addendum.
- (4) Upon receiving the filing and the filing fee pursuant to this section, the division shall send the telemarketing company a written confirmation of receipt of the filing. If the telemarketing company has more than one (1) business location, the written confirmation shall be sent to the telemarketing company's principal business location as identified in the telemarketing company's filing in sufficient numbers so that the telemarketing company can meet the requirements of this subsection. Within ten (10) days of receipt of the confirmation, the telemarketing company shall post in a conspicuous place at each of the telemarketing company's business locations within this state a copy of the entire registration statement which has been filed with the division. Until confirmation of receipt of filing is received and posted, the telemarketing company shall post in a conspicuous place at each of the telemarketing company's business locations within this state a copy of the first page of the registration form sent to the department. The telemarketing company shall also post in close proximity to either the confirmation of receipt of filing or the first page of the submitted registration form the name of the individual in charge of each location from which the telemarketing company does business in this state.

Section 4. KRS 367.46973 is amended to read as follows:

Each filing pursuant to KRS 367.46971 shall contain the following information:

- (1) The name or names of the **telemarketing company**~~[merchant]~~, including the name under which the **telemarketing company**~~[merchant]~~ is doing or intends to do business, if different from the name of the **telemarketing company**~~[merchant]~~, and the name of any parent or affiliated organization that will engage in business transactions with purchasers relating to sales solicited by the **telemarketing company**~~[merchant]~~, or that accepts responsibility for statements made by, or acts of, the **telemarketing company**~~[merchant]~~ relating to sales solicited by the **telemarketing company**~~[merchant]~~;
- (2) The **telemarketing company's**~~[merchant's]~~ business form and place of organization and, if the **telemarketing company**~~[merchant]~~ is a corporation, a copy of its articles of incorporation and bylaws and amendments to those, or, if a partnership, a copy of the partnership agreement, or if operating under a fictitious business name, the location where the fictitious name has been registered, along with a copy of the registration documents. The same information shall be included for any parent or affiliated organization disclosed pursuant to subsection (1) of this section;
- (3) The complete street address of all locations designating the principal location from which the **telemarketing company**~~[merchant]~~ will be conducting business. If the principal business location of the **telemarketing company**~~[merchant]~~ is not in this state, then the **telemarketing company**~~[merchant]~~ shall also designate which of its locations within this state is its main location;
- (4) A listing of all telephone numbers to be used by the **telemarketing company**~~[merchant]~~ and the address where each telephone using each of these telephone numbers is located;

- (5) The name of and the office held by the **telemarketing company's**~~[merchant's]~~ officers, directors, trustees, general and limited partners, sole proprietor, and owners and the names of persons having management responsibilities in the **telemarketing company's**~~[merchant's]~~ business activities;
- (6) The principal residence, the date of birth, and the driver's license number and state of issuance of each person named pursuant to subsection (5) of this section;
- (7) The name and principal residence of each person the **telemarketing company**~~[merchant]~~ leaves in charge at each location in which the **telemarketing company**~~[merchant]~~ does business in this state, and the business location at which each of these persons is in charge;
- (8) A statement, meeting the requirements of this subsection, as to both the **telemarketing company**~~[merchant]~~, whether a corporation, partnership, firm, association, joint venture, or any other type of business entity and as to any person identified pursuant to subsection (5) or (7) of this section who:
 - (a) Has been convicted of a felony or a misdemeanor involving a violation of this article, or fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. For purposes of this paragraph, a plea of nolo contendere shall be considered a conviction;
 - (b) Has had entered against him a final judgment or order in a civil or administrative action, including a stipulated judgment or order, if the complaint or petition in the civil or administrative action alleged acts constituting a violation of KRS 367.46951 to 367.46999, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property, or the use of unfair, unlawful, or deceptive business practices;
 - (c) Is subject to an injunction or restrictive court order relating to business activity as the result of an action brought by a federal, state, or local public agency or unit of that agency, including, but not limited to, an action affecting any vocational license; or
 - (d) Has during the previous seven (7) tax years filed in bankruptcy, been adjudged a bankrupt, been reorganized due to insolvency, or been a principal, director, officer, trustee, general or limited partner, or had management responsibilities of any other corporation, partnership, joint venture, or business entity that has so filed or was so adjudicated or reorganized, during or within one (1) year after the period that the person held that position.

The statement required by paragraphs (a), (b), and (c) of this subsection shall identify the **telemarketing company**~~[merchant]~~ or person, the court or administrative agency rendering the conviction, judgment, or order, the docket number of the matter, the date of the conviction, judgment, or order, and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, or order. For purposes of paragraph (d) of this section, the statement required shall include the name and location of the **telemarketing company**~~[merchant]~~ or person filing in bankruptcy, adjudged a bankrupt, or reorganized due to insolvency, and shall include the date thereof, the court which exercised jurisdiction, and the docket number of the matter;

- (9) A list of the names, driver's license numbers and states of issuance, principal residence addresses, and telephone numbers of salespersons who solicit on behalf of the **telemarketing company**~~[merchant]~~, and any names the salesperson uses while soliciting;
- (10) A description of the items the **telemarketing company**~~[merchant]~~ is offering for sale and a copy of all sales scripts the **telemarketing company**~~[merchant]~~ requires salespersons to use when soliciting prospective purchasers. If no sales script is required to be used, a statement to that effect shall be included;
- (11) A copy of all sales information and literature including, but not limited to, scripts, outlines, instructions, and information regarding how to conduct telephonic sales, sample introductions, sample closings, product information, and contest or premium-award information provided by the **telemarketing company**~~[merchant]~~ to salespersons or of which the **telemarketing company**~~[merchant]~~ informs salespersons, and a copy of all written materials the **telemarketing company**~~[merchant]~~ sends to any prospective or actual purchaser;
- (12) (a) If the **telemarketing company**~~[merchant]~~ represents or implies, or directs salespersons to represent or imply, to purchasers that the purchaser will receive certain specific items, including a certificate of any type which the purchaser must redeem to obtain the item described in the certificate, or one (1) or more items among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes, or otherwise, the filing shall include the following:

1. A list of the items offered;
 2. The actual value or worth of each item described to prospective purchasers and the basis for the valuation; and
 3. The price paid by the **telemarketing company**~~[merchant]~~ to its supplier for each of these items and the name, address, and telephone number of each item's supplier;
- (b) If the purchaser is to receive fewer than all of the items described by the **telemarketing company**~~[merchant]~~, the filing shall include the following:
1. The manner in which the **telemarketing company**~~[merchant]~~ decides which item each prospective purchaser is to receive;
 2. The odds a single prospective purchaser has of receiving each described item;
 3. The name and address of each recipient who has, during the preceding twelve (12) months, or if the **telemarketing company**~~[merchant]~~ has not been in business that long, during the period the **telemarketing company**~~[merchant]~~ has been in business, received the item having the greatest value and the item with the smallest odds of being received; and
 4. All rules, regulations, terms, and conditions a prospective purchaser must meet in order to receive the item; and
- (13) If the **telemarketing company**~~[merchant]~~ is offering an investment, business, or employment opportunity, the filing shall include the following:
- (a) The number of consumers or investors who have participated to date;
 - (b) The actual experience of the consumers or investors as measured by standards used in the sales presentations; and
 - (c) If the opportunity is so recent that no actual performance experience exists, that fact shall be disclosed in all sales presentations, and no other representation of performance shall be made in sales presentations.

Section 5. KRS 367.46994 is amended to read as follows:

- (1) *The Office of the Attorney General immediately shall request that the Federal Trade Commission include on the national Do Not Call Registry the residential numbers that were placed on the zero call list on or before the effective date of this Act. If the Federal Trade Commission denies the request, then those households whose residential numbers will be purged from the zero call list shall be informed by the Office of the Attorney General on how to place their telephone number on the national Do Not Call Registry.* ~~[Any person may apply to the Office of the Attorney General, Division of Consumer Protection, to have his or her residential telephone number listed on the zero call list. The Office of the Attorney General shall provide automated telephone dial-in registration and shall collect only the home phone number from the applicant deemed to be required to administer the zero call list. The Office of the Attorney General shall promulgate administrative regulations to:~~
- ~~(a) Provide for automatic telephone number referral from the incumbent local exchange carrier or the competitive local exchange carrier to the Office of the Attorney General for the purpose of updating the zero call list to reflect an applicant's change of address or an applicant's termination of telephone service; and~~
 - ~~(b) Develop, modify, or administer the zero call list in such a way as to permit interface with any national registry established by the Federal Trade Commission or the Federal Communications Commission for the purpose of including in Kentucky's zero call list that part of the national database that relates to the Commonwealth or release to the national registry applicants on the zero call list that indicate a preference to be listed on a national registry.~~
- ~~(2) The Attorney General shall place the residential telephone number provided by the applicant on the list. The Attorney General may update the information on the list as provided in subsection (1) of this section, but shall not remove the information unless requested to do so in writing by the applicant, or upon receiving notice that the given telephone number is no longer held in the name of the applicant.]~~

(2)(3) Persons whose telephone numbers appear on the zero call list shall not receive telephone solicitations except in accordance with the provisions of KRS 367.46951 to 367.46999.

~~[(4) Any person that applies to the Office of the Attorney General to be placed on the zero call list shall be informed about how to add his or her name or telephone number to company specific and industry wide no solicitation call lists, including those lists provided by the Direct Marketing Association (DMA) and the Telephone Preference Service (TPS).]~~

(3)(5) Information contained in a database established for the purpose of administering the zero call list shall be used only for the purpose of implementing the zero call program in conformance with KRS 367.46951 to 367.46999.

~~[(6) The zero call list shall be available at no cost to any merchant or telemarketing company that is required to consult the list. In addition to the formats described in KRS 367.46955(15), the list shall be made available in a format for electronic download from the Internet Web page of the Office of the Attorney General. The Attorney General shall make the electronic list available in a format that is searchable by area code and by local exchange. The electronic format shall be arranged with the last four digits of the telephone numbers in ascending order. The electronic list shall also be searchable by individual number and shall be downloadable in at least five (5) of the most common commercially available data management program formats. Hard copies of the zero call list shall be arranged by area code and local exchange with the last four digits in ascending order. The Office of the Attorney General shall develop procedures to assure that:~~

~~(a) The merchant or telemarketing company requesting the list shall maintain the confidentiality of the information on the list; and~~

~~(b) The merchant or telemarketing company shall use the list only for the purpose of preventing telephone solicitation calls to persons whose telephone numbers appear on the list.]~~

(4)(7) The Kentucky Public Service Commission shall produce~~[a]~~ consumer education *materials*~~[pamphlet]~~ that:

(a) Describes~~[the changes made in the year 2002 to]~~ Kentucky's telemarketing laws~~[including the creation of the zero call list];~~

(b) Describes the consumer's rights and responsibilities regarding the receipt of telephone solicitation;

(c) Explains how consumers can apply to be placed~~[on the zero call list and]~~ on any federal do not call registry established by the Federal Communications Commission *and*~~[or]~~ the Federal Trade Commission;

(d) Explains how to apply to be placed on company-specific and industrywide no solicitation calls list, including those lists provided by the Direct Marketing Association (DMA) and the Telephone Preference Service (TPS); and

(e) Describes how a consumer can file a complaint if the consumer receives calls after being placed on the *Do Not Call Registry established by the Federal Communications Commission and the Federal Trade Commission*~~[zero call list].~~

(5)(8) ~~The~~~~[At least once a year, the]~~ Public Service Commission shall require that, *once a year, telephone companies under the jurisdiction of the Public Service Commission shall include the customer education material or portions thereof, at the discretion of the companies, in either the billing inserts, billing messages, or in the Customer Guide pages of their telephone directories*~~[the pamphlet be included in the billing inserts of the telephone companies under the Public Service Commission's jurisdiction].~~

Section 6. KRS 367.990 is amended to read as follows:

(1) Any person who violates the terms of a temporary or permanent injunction issued under KRS 367.190 shall forfeit and pay to the Commonwealth a civil penalty of not more than twenty-five thousand dollars (\$25,000) per violation. For the purposes of this section, the Circuit Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the Commonwealth may petition for recovery of civil penalties.

(2) In any action brought under KRS 367.190, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by KRS 367.170, the Attorney General, upon petition to the court, may recover, on behalf of the Commonwealth, a civil penalty of not more than two thousand dollars

(\$2,000) per violation, or where the defendant's conduct is directed at a person aged sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000) per violation, if the trier of fact determines that the defendant knew or should have known that the person aged sixty (60) or older is substantially more vulnerable than other members of the public.

- (3) Any person with actual notice that an investigation has begun or is about to begin pursuant to KRS 367.240 and 367.250 who intentionally conceals, alters, destroys, or falsifies documentary material is guilty of a Class A misdemeanor.
- (4) Any person who, in response to a subpoena or demand as provided in KRS 367.240 or 367.250, intentionally falsifies or withholds documents, records, or pertinent materials that are not privileged shall be subject to a fine as provided in subsection (3) of this section.
- (5) The Circuit Court of any county in which any plan described in KRS 367.350 is proposed, operated, or promoted may grant an injunction without bond, upon complaint filed by the Attorney General to enjoin the further operation thereof, and the Attorney General may ask for and the court may assess civil penalties against the defendant in an amount not to exceed the sum of five thousand dollars (\$5,000) which shall be for the benefit of the Commonwealth of Kentucky.
- (6) Any person, business, or corporation who knowingly violates the provisions of KRS 367.540 shall be guilty of a violation. It shall be considered a separate offense each time a magazine is mailed into the state; but it shall be considered only one (1) offense for any quantity of the same issue of a magazine mailed into Kentucky.
- (7) Any solicitor who violates the provisions of KRS 367.513 or 367.515 shall be guilty of a Class A misdemeanor.
- (8) In addition to the penalties contained in this section, the Attorney General, upon petition to the court, may recover, on behalf of the Commonwealth a civil penalty of not more than the greater of five thousand dollars (\$5,000) or two hundred dollars (\$200) per day for each and every violation of KRS 367.175.
- (9) Any person who shall willfully and intentionally violate any provision of KRS 367.976 to 367.985 shall be guilty of a Class B misdemeanor.
- (10)
 - (a) Any person who violates the terms of a temporary or permanent injunction issued under KRS 367.665 shall forfeit and pay to the Commonwealth a penalty of not more than five thousand dollars (\$5,000) per violation. For the purposes of this section, the Circuit Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the Commonwealth may petition for recovery of civil penalties;
 - (b) The Attorney General may, upon petition to a court having jurisdiction under KRS 367.190, recover on behalf of the Commonwealth from any person found to have willfully committed an act declared unlawful by KRS 367.667 a penalty of not more than two thousand dollars (\$2,000) per violation; and
 - (c) Any person who knowingly violates any provision of KRS 367.652, 367.653, 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false or incorrect information to the Attorney General in filing statements or reports required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.
- (11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under KRS 367.765 shall be liable for a penalty of one hundred dollars (\$100) per violation to be collected in the name of the Commonwealth upon action of the Attorney General.
- (12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be liable for a penalty not exceeding one thousand dollars (\$1,000) to be collected in the name of the Commonwealth upon action by the Attorney General.
- (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or 367.816 shall be guilty of a Class C felony.
- (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have authority to prosecute violations of KRS 367.801 to 367.819.

- (15) A violation of KRS 367.474 to 367.478 and 367.482 is a Class C felony. Either the Attorney General or the appropriate Commonwealth's attorney shall have authority to prosecute violators of KRS 367.474 to 367.478 and 367.482.
- (16) Any person who violates KRS 367.310 shall be guilty of a violation.
- (17) Any person, partnership, or corporation who violates the provisions of KRS 367.850 shall be guilty of a Class A misdemeanor.
- (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets back, disconnects, fails to connect, or causes to be changed, set back, or disconnected, the speedometer or odometer of any motor vehicle, to effect the sale of the motor vehicle shall be guilty of a Class D felony.
- (19) Any person who negotiates a contract of membership on behalf of a club without having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty of a Class D felony.
- (20) Any person or corporation who operates or attempts to operate a health spa in violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.
- (21)
 - (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony; and
 - (b) The appropriate Commonwealth's attorney shall have authority to prosecute felony violations of KRS 367.832.
- (22)
 - (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be guilty of a violation. Either the Attorney General or the appropriate county health department may prosecute violators of KRS 367.855 or 367.857.
 - (b) The provisions of this subsection shall not apply to any retail establishment if the wholesaler, distributor, or processor fails to comply with the provisions of KRS 367.857.
- (23) Notwithstanding any other provision of law, any telemarketing company, telemarketer, caller, or merchant shall be guilty of a Class D felony when that telemarketing company, telemarketer, caller, or merchant three (3) times in one (1) calendar year knowingly and willfully violates KRS 367.46955(15)~~((a))~~ by making or causing to be made an unsolicited telephone solicitation call to a telephone number that appears in the current publication of the zero call list maintained by the Office of the Attorney General, Division of Consumer Protection.
- (24) Notwithstanding any other provision of law, any telemarketing company, telemarketer, caller, or merchant shall be guilty of a Class A misdemeanor when that telemarketing company, telemarketer, caller, or merchant uses a zero call list identified in KRS 367.46955(15) for any purpose other than complying with the provisions of KRS 367.46951 to 367.46999.
- (25)
 - (a) Notwithstanding any other provision of law, any telemarketing company, telemarketer, caller, or merchant that violates KRS 367.46951 to 367.46999 shall be assessed a civil penalty of not more than five thousand dollars (\$5,000) for each offense.
 - (b) The Attorney General, or any person authorized to act in his or her behalf, shall initiate enforcement of a civil penalty imposed under paragraph (a) of this subsection.
 - (c) Any civil penalty imposed under paragraph (a) of this subsection may be compromised by the Attorney General or his or her designated representative. In determining the amount of the penalty or the amount agreed upon in compromise, the Attorney General, or his or her designated representative, shall consider the appropriateness of the penalty to the financial resources of the telemarketing company, telemarketer, caller, or merchant charged, the gravity of the violation, the number of times the telemarketing company, telemarketer, caller, or merchant charged has been cited, and the good faith of the telemarketing company, telemarketer, caller, or merchant charged in attempting to achieve compliance, after notification of the violation.

- (d) If a civil penalty is imposed under this subsection, a citation shall be issued which describes the violation which has occurred and states the penalty for the violation. If, within fifteen (15) working days from the receipt of the citation, the affected party fails to pay the penalty imposed, the Attorney General, or any person authorized to act in his or her behalf, shall initiate a civil action to collect the penalty. The civil action shall be taken in the court which has jurisdiction over the location in which the violation occurred.

Approved April 5, 2007.

CHAPTER 116

(SB 25)

AN ACT relating to nutrition.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Farmers Market Nutrition Program is created within the Kentucky Department of Agriculture, in collaboration with the Cabinet for Health and Family Services, for the purpose of enhancing nutrition. The program services may include the provision of fresh, locally grown produce to low-income citizens, including but not limited to seniors and recipients of the Special Supplemental Nutrition Program for Women, Infants, and Children provided by the federal Food and Nutrition Services.*
- (2) *The department may collaborate with the United States Department of Agriculture, the University of Kentucky College of Agriculture Cooperative Extension, local Area Agencies on Aging, community agencies, foundations, philanthropic organizations, farmers, and local fiscal courts to:*
 - (a) *Identify funding sources;*
 - (b) *Establish services and a program delivery strategy;*
 - (c) *Market the program to citizens and farmers; and*
 - (d) *Develop strategies to introduce fresh, locally grown fruits and vegetables into school food programs.*
- (3) *The department may promulgate administrative regulations to establish eligibility criteria and implement the program established in subsection (1) of this section.*
- (4) *The department may accept gifts, grants, federal or state funds, or any other public or private funds to develop or implement the program.*
- (5) *The Kentucky Farmers Market Nutrition Program fund is created in the State Treasury as a trust and agency account. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the Commissioner of the Kentucky Department of Agriculture. This fund shall be used solely for the purpose of providing nutritious food to low-income citizens. The fund shall not lapse, and funds not expended during any fiscal year shall carry forward to the next fiscal year.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

The Commissioner of the Kentucky Department of Agriculture shall submit an annual report to the Interim Joint Committee on Health and Welfare and the Interim Joint Committee on Agriculture and Natural Resources, which includes but is not limited to:

- (1) *The amount of funding received for the Kentucky Farmers Market Nutrition Program;*
- (2) *The economic impact of the program;*
- (3) *Strategies implemented to market the program and improve nutrition; and*
- (4) *Statistics related to the number of individuals served and farmers' markets participating in the program.*

Section 3. The delivery of services and marketing authorized under Section 1 of this Act shall be implemented upon receipt of adequate funding.

Approved April 5, 2007.

CHAPTER 117**(SB 143)**

AN ACT relating to the University of Kentucky, making an appropriation therefor, and declaring an emergency.

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

Section 1. 2006 Kentucky Acts Chapter 252, Part II, Capital Projects Budget; K. Postsecondary Education; 8. University of Kentucky, at page 1252, is amended to read as follows:

275.	Fayette County - Lease - Med Center Off-Campus Facility			
276.	Fayette County - Lease - Med Center Grant Projects			
277.	Fayette County - Lease - Pharmacy Contracted Program			
278.	Fayette County - Lease - Med College Off - Campus Clinic			
279.	Fayette County - Lease - Kentucky Utilities Building			
280.	Guaranteed Energy Savings Performance Contracts			
287.	<i>Lease-Purchase Samaritan Clinical Facility</i>			
	<i>Restricted Funds</i>	<i>-0-</i>	<i>70,000,000</i>	<i>-0-</i>
288.	<i>Renovate Samaritan Clinical Facility</i>			
	<i>Restricted Funds</i>	<i>-0-</i>	<i>10,000,000</i>	<i>-0-</i>
289.	<i>Lease-Purchase IT System for the Samaritan Clinical Facility</i>			
	<i>Restricted Funds</i>	<i>-0-</i>	<i>10,000,000</i>	<i>-0-</i>

Section 2. Whereas it is critical to provide authorization in the current biennium to the University of Kentucky for the Samaritan Clinical Facility, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved April 5, 2007.

CHAPTER 118**(HJR 72)**

A JOINT RESOLUTION establishing a Railroad Revitalization Task Force.

WHEREAS, Kentucky's freight railroads are a vital force in both the state and national economies and a crucial component of the Commonwealth's transportation system; and

WHEREAS, more than a dozen railroads operate in Kentucky, providing service across a 2,600-mile rail network that reaches all corners of the state; and

WHEREAS, railroads are hauling more commodities than ever before, carrying 16 percent of the nation's freight by tonnage and accounting for 40 percent of intercity ton miles and 28 percent of all ton miles; and

WHEREAS, since 1994, short-line railroads have moved over 9,000 car units of coal, which is equivalent to keeping one million coal haul truck loads off our state's highways; and

WHEREAS, it is in the interest of the Commonwealth to help keep short-line railroads commercially competitive and financially viable; and

WHEREAS, other states have established creative financing options to assist short-line railroads in keeping vital rail lines operational and economically viable;

NOW, THEREFORE,

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

Section 1. The Legislative Research Commission is directed to establish a task force to study the creation of a short-line railroad revitalization program. The task force shall study all aspects of the creation of a short-line railroad revitalization program, including but not limited to the following issues:

- (1) The current state of the short-line rail system in Kentucky, including an inventory of existing tracks and recent abandonments;
- (2) Maintenance needs on the current short-line system;
- (3) Options for financing a revitalization program, including the use of bonds, economic development financing, and dedicated taxes on locomotive diesel fuel; and
- (4) The experiences of other states in establishing and operating such a program.

Section 2. The task force shall propose new legislation, if appropriate.

Section 3. The task force shall be composed of 11 members. The members of this task force shall include:

- (1) Three members of the House of Representatives, appointed by the Speaker of the House;
- (2) Three members of the Senate, appointed by the President of the Senate;
- (3) The secretary of the Transportation Cabinet, or the secretary's designee;
- (4) The secretary of the Commerce Cabinet, or the secretary's designee;
- (5) The secretary of the Economic Development Cabinet, or the secretary's designee; and
- (6) Two representatives of the short-line railroads, to be appointed by the Legislative Research Commission.

Final membership of the task force is subject to the consideration and approval of the Legislative Research Commission.

Section 4. The Legislative Research Commission shall provide staffing for the work of the task force.

Section 5. The task force shall meet monthly and it shall convene its first meeting in July, 2007. The task force shall report its findings and recommendations to the Legislative Research Commission for referral to the appropriate interim joint committee or committees by December 31, 2007, at which time the task force shall cease to exist.

Section 6. Provisions of this Resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved April 5, 2007.

CHAPTER 119

(HB 469)

AN ACT relating to firearms.

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

Section 1. KRS 237.020 is amended to read as follows:

- (1) Residents of the Commonwealth of Kentucky *who are citizens of the United States* shall have the right to purchase *or otherwise acquire* rifles, shotguns, *handguns, and any other firearms which they are permitted to purchase or otherwise acquire under federal law and the Kentucky Revised Statutes from properly licensed dealers, manufacturers, importers, or collectors, and unlicensed individual persons in Kentucky or in any other state or nation outside of the Commonwealth of Kentucky.*
- (2) *Residents of states other than the Commonwealth of Kentucky who are citizens of the United States shall have the right to purchase or otherwise acquire rifles, shotguns, handguns, and any other firearms which they are permitted to purchase or otherwise acquire under federal law and the Kentucky Revised Statutes*

from properly licensed dealers, manufacturers, importers, or collectors and from unlicensed individual persons in the Commonwealth of Kentucky.

- (3) *Citizens of countries other than the United States shall have the right to purchase or otherwise acquire rifles, shotguns, handguns, and any other firearms which they are permitted to purchase or otherwise acquire under federal law and the Kentucky Revised Statutes from properly licensed dealers, manufacturers, importers, or collectors and from unlicensed individual persons*~~and any other firearms which they are permitted to purchase under federal law from properly licensed dealers, manufacturers, importers, or collectors located in states contiguous to the Commonwealth of Kentucky.~~
- ~~(2) Residents of states contiguous to the Commonwealth of Kentucky may purchase rifles, shotguns, and any other firearms which they are permitted to purchase under federal law from properly licensed dealers, manufacturers, importers, or collectors located in the Commonwealth of Kentucky.~~
- ~~(4)~~~~(3)}~~ All such sales shall conform to the requirements of federal law, the Kentucky Revised Statutes, applicable local ordinances, and the law of the purchaser's state.

Approved April 5, 2007.

CHAPTER 120

(HB 156)

AN ACT relating to charitable gaming.

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

Section 1. KRS 238.550 is amended to read as follows:

- (1) All adjusted gross receipts from charitable gaming shall be handled only by chairpersons, officers, or employees of the licensed charitable organization.
- (2) Within two (2) business days after the completion of a charitable gaming event or session, all gross receipts and adjusted gross receipts shall be deposited into one checking account devoted exclusively to charitable gaming. This checking account shall be designated the "charitable gaming account," and the licensed charitable organization shall maintain its account at a financial institution located in the Commonwealth of Kentucky. No other funds may be deposited or transferred into the charitable gaming account.
- (3) All payments for charitable gaming expenses, payments made for prizes purchased, and any charitable donations from charitable gaming receipts shall be made from the charitable gaming account and the payments or donations shall be made only by bona fide officers of the organization by checks having preprinted consecutive numbers and made payable to specific persons or organizations. No check drawn on the charitable gaming account may be made payable to "cash," or "bearer," except that a licensed charitable organization may withdraw start-up funds for a charitable gaming event or session from the charitable gaming account by check made payable to "cash" or "bearer," if these start-up funds are redeposited into the charitable gaming account together with all adjusted gross receipts derived from the particular event or session. Checks shall be imprinted with the words "charitable gaming account" and shall contain the organization's license number on the face of each check. Payments for charitable gaming expenses, prizes purchased, and charitable donations may be made by electronic funds transfer if the payments are made to specific persons or organizations. The office may by administrative regulation adopt alternative reporting requirements for charitable gaming of limited scope or duration, if these requirements are sufficient to ensure accountability for all moneys handled.
- (4) A licensed charitable organization shall expend net receipts exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax-exempt status, or consistent with its status as a common school, an institution of higher education, or a state college or university. No net receipts shall inure to the private benefit or financial gain of any individual.
- (5) Accurate records and books shall be maintained by each organization exempt from licensure under KRS 238.535(1) and each licensed charitable organization for a period of three (3) years. Office staff shall have access to these records at reasonable times. Licensed charitable organizations and exempt organizations shall maintain their charitable gaming records at their offices or places of business within the Commonwealth of Kentucky as identified in their license applications or applications for exempt status.~~[- All licensed charitable~~

~~organizations shall be required to submit reports to the office at least quarterly.]~~ An exempt organization shall submit a yearly financial report in accordance with KRS 238.535(2), and failure to file this report shall constitute grounds for revocation of the organization's exempt status.

- (6) *All licensed charitable organizations that have annual gross receipts of two hundred thousand dollars (\$200,000) or less and do not have a weekly bingo session shall report to the office annually at the time and on a form established in administrative regulations promulgated by the office.*
- (7) *All other licensed charitable organizations shall submit reports to the office at least quarterly at the time and on a form established in administrative regulations promulgated by the office.*
- (8) Failure by a licensed charitable organization to file reports required under this chapter shall constitute grounds for revocation of the organization's license or denial of the organization's application to renew its license in accordance with KRS 238.560(3). Reports filed by a licensed charitable organization shall include, but shall not be limited to, the following information:
 - (a) All gross receipts received from charitable gaming for the reporting period, classified by type of gaming activity;
 - (b) ~~{The amounts or values of all prizes paid out during the reporting period, including a listing of all prizes donated having a fair market value in excess of fifty dollars (\$50), the names of donors, and the fair market value of the donated prizes;~~
 - ~~(c) — {The names and addresses of all persons who are winners of prizes having a fair market value of six hundred dollars (\$600) or more;~~
 - ~~(c){(d)}~~ All expenses paid and the names and addresses of all persons to whom expenses were paid;
 - ~~(d){(e)}~~ All net receipts retained and the names and addresses of all charitable endeavors that received money from the net receipts; and
 - ~~(e){(f)}~~ Any other information the office deems appropriate.
- ~~(9){(6)}~~ No licensed charitable organization shall incur charitable gaming expenses, except as provided in this chapter. No licensed charitable organization shall be permitted to expend amounts in excess of prevailing market rates for the following charitable gaming expenses:
 - (a) Charitable gaming supplies and equipment;
 - (b) Rent;
 - (c) Utilities;
 - (d) Insurance;
 - (e) Advertising;
 - (f) Janitorial services;
 - (g) Bookkeeping and accounting services;
 - (h) Security services;
 - (i) Membership dues for its participation in any charitable gaming trade organization; and
 - (j) Any other expenses the office may determine by administrative regulation to be legitimate.
- ~~(10){(7)}~~ No licensed charitable organization shall expend receipts from charitable gaming activities nor incur expenses to form, maintain, or operate as a labor organization.

Section 2. KRS 238.560 is amended to read as follows:

- (1) The office may investigate allegations of wrongdoing upon complaint or upon its own volition. The office by administrative regulation shall establish procedures for receiving and investigating complaints in an expeditious manner.
- (2) In carrying out its enforcement responsibilities, the office may:

- (a) Inspect and examine all premises in which or on which charitable gaming is conducted or charitable gaming supplies or equipment are manufactured or distributed;
 - (b) Seize and remove from premises and impound charitable gaming supplies and equipment for the purposes of examination and inspection pursuant to an appropriate court order;
 - (c) Demand access to, inspect, and audit books and records of licensees for the purpose of determining compliance with laws and administrative regulations relative to charitable gaming; and
 - (d) Conduct in-depth audits and investigations, when warranted.
- (3) (a) *As used in this subsection, "willful" means that the conduct constituting the violation was committed with intent, not accidentally or inadvertently.*
- (b) The office may take appropriate administrative action against any person licensed under this chapter for any violation of the provisions of this chapter or administrative regulations promulgated thereunder *subject to the conditions established by this subsection.*
- (c) The office may deny a license, suspend or revoke a license, issue a cease and desist order, place a license holder on probation, issue a letter of reprimand *or letter of warning*, and levy a fine. An administrative fine shall not exceed one thousand dollars (\$1,000) for each offense. The office may deny the issuance of a license or a license renewal if the applicant or licensee has failed to pay a fine levied by the office. The office shall by administrative regulation classify types of offenses and the recommended administrative action. The type of action to be taken shall be based on the history of previous violations and the nature, severity, and frequency of the offense. Administrative action authorized in this section shall be in addition to any criminal penalties provided in this chapter or under other provisions of law.
- (d) 1. *Notwithstanding any other provisions of this section, the office shall review, within two (2) months of receipt, timely filed organization quarterly reports that include payment of the fee due as reflected on the organization quarterly report. If the office discovers reporting errors that are not willful, the office shall, prior to taking any other administrative action, issue a letter of warning to the licensee and allow the licensee thirty (30) days from the issuance of the letter to correct the identified violation. The purpose of this subparagraph is for the office to identify correctable reporting errors in a timely manner, and to notify the licensee of the errors prior to the due date of the next organization quarterly report so that the errors are corrected and are not repeated in subsequent organization quarterly reports.*
2. *A review conducted under subparagraph 1. of this paragraph shall not be considered an audit or final review and acceptance of an organization quarterly report and payment. The office shall have four (4) years from the date of filing to fully audit and review an organization quarterly report, and may pursue administrative actions against the licensee related to an organization quarterly report or the information reported on an organization quarterly report within the four (4) year period if violations or errors that are not willful are discovered. This subparagraph shall not be construed to require records that are not needed to audit or review an organization quarterly report to be kept longer than is required elsewhere in this chapter or in any related administrative regulations.*
3. *Notwithstanding the provisions of subparagraph 2. of this paragraph, for a violation that is determined to be willful, the office may pursue the administrative actions authorized by this section at any time.*
4. *A letter of warning issued under this section shall:*
- a. *Identify the violation;*
 - b. *Describe the corrective action necessary;*
 - c. *Identify the administrative actions that can be taken if the violation is not addressed; and*
 - d. *Provide that the person shall have thirty (30) days to correct the action leading to the violation.*

- (4) The office may reinstate a license that has been revoked at any time after two (2) years from the date of revocation. A license may be reinstated only upon a finding that the violations for which the license was revoked have been corrected.
- (5) All departments, divisions, boards, agencies, officers, and institutions of the Commonwealth of Kentucky and all subdivisions thereof, in particular local law enforcement entities, shall cooperate with the office in carrying out its enforcement responsibilities.
- (6) The office shall report any activity or action which would constitute a criminal offense to the appropriate authorities in the county where the activity or action occurred and to the Attorney General.

Section 3. KRS 238.570 is amended to read as follows:

- (1) A fee is imposed on charitable gaming in the amount of fifty-three hundredths of one percent (0.53%) of gross receipts derived from all charitable gaming conducted by charitable organizations required to be licensed in the Commonwealth of Kentucky. ***The amount of the fee shall be adjusted by October 1 of each odd-numbered year in accordance with subsection (3) of this section.*** Each licensed charitable organization shall remit to the office all moneys due ~~as set forth in administrative regulations promulgated by the office on a quarterly basis~~. Failure by a licensed charitable organization to timely remit the fee required under this subsection upon notice of delinquency shall constitute grounds for disciplinary action in accordance with KRS 238.560.
- (2) The charitable gaming regulatory account is hereby created as a revolving account within the agency revenue fund and under the control of the Environmental and Public Protection Cabinet. All revenues generated from the fee levied in subsection (1) of this section from license fees and from administrative fines imposed by the office shall be deposited in this account. ***Fund amounts attributable to the fee levied in subsection (1) of this section that are not expended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year.***
- (3)
 - (a) ***No later than July 31 of each odd-numbered year, the Environmental and Public Protection Cabinet shall determine:***
 1. ***The amount of gross receipts during the prior biennium against which the fee collected under subsection (1) of this section was assessed; and***
 2. ***The final budgeted amount as determined by the enacted budget for the upcoming biennium for the administration and enforcement of the provisions of this chapter. If a budget is not enacted, the amount shall be the corresponding amount in the last enacted budget.***
 - (b) ***On October 1 of each odd-numbered year, the fee assessed under subsection (1) of this section shall be proportionally adjusted by the Environmental and Public Protection Cabinet. The new rate shall be calculated by multiplying one hundred ten percent (110%) by the amount determined in paragraph (a)2. of this subsection, and subtracting from that amount one-half (1/2) of any remaining balance in the account. The total shall then be divided by the amount determined in paragraph (a)1. of this subsection. The result shall be expressed as a percentage and shall be rounded to the nearest thousandth of a percent (0.000%).***~~Moneys in this account shall be expended by the office only in the administration and enforcement of provisions of this chapter. No later than July of each odd-numbered year, the office shall assess the amount of funds raised by all fees levied in this chapter and shall make recommendations to the Legislative Research Commission concerning legislative amendments to adjust fee rates as indicated by the assessment.~~

SECTION 4. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

- (1)
 - (a) ***If the office has proposed a new or amended administrative regulation that changes the manner in which a charitable organization conducts charitable gaming or is likely to cause a charitable organization to incur new or additional costs, the office shall not promulgate the proposed administrative regulation without first receiving comments from the Charitable Gaming Advisory Commission established in Section 5 of this Act, subject to the restrictions of paragraph (b) of this subsection.***
 - (b)
 1. ***If the proposed administrative regulation qualifies under paragraph (a) of this subsection, the office shall distribute the proposed administrative regulation to the advisory commission.***

2. *The advisory commission shall be granted a maximum of sixty (60) days to submit its comments on the proposed regulatory change. If the administrative regulation is a new emergency regulation, the advisory commission shall be granted a maximum of thirty (30) days to submit its comments on the proposed regulatory change.*
3. *The time limits in this paragraph shall begin from the day the office submits the regulatory change and sets a date for a proposed hearing for the comments of the advisory commission. If the advisory commission is already scheduled to meet at a time that will give it an adequate opportunity to review the regulation and respond, the hearing may be held at that meeting.*
4. *If an advisory commission is not scheduled to meet, the office shall arrange for the advisory commission to meet at a time that will provide the advisory commission an adequate opportunity to review and comment on the regulation within the time limit. If the advisory commission fails to comment within the time limit, the office may proceed with the administrative changes at its discretion.*
- (c) *To the extent that any other statute relating to the office's authority to promulgate administrative regulations conflicts with this section, this section shall take precedence.*
- (d) *If the advisory commission chooses to produce written comments, these comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A, and may include majority or minority comments or both.*
- (2) *Any power or limitation relating to administrative regulations promulgated by the office that are subject to subsection (1) of this section shall also apply to administrative regulations promulgated by the executive director of the office.*

Section 5. KRS 238.520 is amended to read as follows:

- (1) The Charitable Gaming Advisory Commission is created to be composed of nine (9) members consisting of:
 - (a) The secretary of the Environmental and Public Protection Cabinet or his designee;
 - (b) The Attorney General or his designee;
 - (c) One (1) representative from the Kentucky Commonwealth's Attorneys Association;
 - (d) One (1) representative from the Kentucky Charitable Gaming Association;
 - (e) One (1) certified public accountant; ~~and~~
 - (f) ***One (1) member***~~[Four (4) members]~~ selected from the public at large;
 - (g) ***One (1) representative selected from the Joint Executive Council of Veterans Organizations of Kentucky;***
 - (h) ***One (1) representative from Catholic organizations; and***
 - (i) ***One (1) representative from Kentucky's volunteer firefighter organizations.***

The certified public accountant, the ***one (1)***~~[four (4)]~~ at-large ***member***~~[members]~~, and the representatives from the Kentucky Commonwealth's Attorneys Association and the Kentucky Charitable Gaming Association shall be appointed by the Governor. The representative from each of the two (2) associations, ***the one (1) representative from the Joint Executive Council of Veterans Organizations of Kentucky, the one (1) representative from the Catholic organizations, and the one (1) representative from the volunteer firefighter organizations*** shall be selected from a list of at least three (3) names submitted to the Governor by the respective association.

- (2) Initial appointments to the commission shall be for staggered terms as follows: one (1) member for a term of one (1) year; two (2) members for a term of two (2) years; two (2) members for a term of three (3) years; and two (2) members for a term of four (4) years. Thereafter, each member shall be appointed for a term of four (4) years. No member from the public at large shall be appointed in the same year. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term. No member of the commission may serve more than two (2) full terms.

- (3) The Charitable Gaming Advisory Commission shall provide ongoing advice and input to the office and to the General Assembly but shall not ~~establish policy or~~ become directly involved in the licensing and regulation of charitable gaming by the office.
- (4) The commission shall meet quarterly, ***upon the request of the chair or four (4) of its members*** or as otherwise directed by the office. Five (5) members shall constitute a quorum for conducting business. The commission shall annually elect a chairman from its membership, and no person elected chairman shall serve more than two (2) consecutive terms of one (1) year each. Members shall receive no compensation for serving on the commission, but shall be reimbursed for travel expenses for attending meetings and performing other official functions, consistent with state reimbursement policy for state employees.

Section 6. KRS 238.515 is amended to read as follows:

The office shall license and regulate the conduct of charitable gaming in the Commonwealth of Kentucky. In discharging this responsibility, the office shall have the following powers and duties:

- (1) Licensing charitable organizations, charitable gaming facilities, manufacturers, and distributors that desire to engage in charitable gaming;
- (2) Establishing and enforcing reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities;
- (3) Prescribing reasonable fees for licenses;
- (4) Establishing standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for;
- (5) Establishing a process for reviewing complaints and allegations of wrongdoing, and for investigating complaints with merit. In furtherance of this duty, the office shall have the authority to issue administrative subpoenas and summonses. The office shall also establish toll-free telephone service for receiving complaints and inquiries;
- (6) Taking appropriate disciplinary action and making referrals for criminal prosecution of persons who do not operate in compliance with this chapter;
- (7) Collecting and depositing all fees and fines in the charitable gaming regulatory account and administering the account;
- (8) Employing necessary staff, securing adequate office space, and executing other administrative and logistical matters as may be necessary to assure proper functioning of the office; and
- (9) Promulgating administrative regulations, in accordance with KRS Chapter 13A, which are necessary to carry out the purposes and intent of this chapter. ***Any administrative regulation proposed by the office that changes the manner in which a charitable organization conducts charitable gaming or is likely to cause a charitable organization to incur new or additional costs shall be subject to the requirements of Section 4 of this Act. In promulgating administrative regulations under this subsection, the office shall submit any proposed regulations to the advisory commission established under Section 5 of this Act, and shall not promulgate the administrative regulations without giving the advisory commission the opportunity to produce written comments in accordance with Section 4 of this Act. If the advisory commission chooses to produce written comments, the comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A.***

Section 7. KRS 238.535 is amended to read as follows:

- (1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the office. A charitable organization qualifying under subsection (8) of this section but not exceeding the limitations provided in this subsection shall be exempt from the licensure requirements when conducting the following charitable gaming activities:
 - (a) Bingo in which the gross receipts do not exceed a total of twenty-five thousand dollars (\$25,000) per year;
 - (b) A raffle or raffles for which the gross receipts do not exceed twenty-five thousand dollars (\$25,000) per year; and

- (c) A charity fundraising event or events that do not involve special limited charitable games and the gross gaming receipts for which do not exceed twenty-five thousand dollars (\$25,000) per year.

However, at no time shall a charitable organization's total limitations under this subsection exceed twenty-five thousand dollars (\$25,000).

- (2) Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall notify the office in writing, on a simple form issued by the office, of its intent to engage in exempt charitable gaming and the address at which the gaming is to occur. Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall comply with all other provisions of this chapter relating to the conduct of charitable gaming, except:
 - (a) Payment of the fee imposed under the provisions of KRS 238.570; and
 - (b) The quarterly reporting requirements imposed under the provisions of KRS 238.550~~(7)(5)~~, unless the exempt charitable organization obtains a retroactive license pursuant to subsection (5) of this section.

Before the last day of each year, a charitable organization exempt from licensure under the provisions of subsection (1) of this section shall file with the office a financial report detailing the type of gaming activity in which it engaged during that year, the total gross receipts derived from gaming, the amount of charitable gaming expenses paid, the amount of net receipts derived, and the disposition of those net receipts. This report shall be filed on a form issued by the office. Upon receipt of the yearly financial report, the office shall notify the charitable organization submitting it that its exemption is renewed for the next year. If the office determines that information appearing on the financial report renders the charitable organization ineligible to possess an exemption, the office shall revoke the exemption. The organization may request an appeal of this revocation pursuant to KRS 238.565. If an exemption is revoked because an organization has exceeded the limit imposed in subsection (1) of this section, the organization shall apply for a retroactive license in accordance with subsection (3) of this section.

- (3) If an organization exceeds the limit imposed by any subsection of this section it shall:
 - (a) Report the amount to the office; and
 - (b) Apply for a retroactive charitable gaming license.
- (4) Upon receipt of a report and application for a retroactive charitable gaming license, the office shall investigate to determine if the organization is otherwise qualified to hold the license.
- (5) If the office determines that the applicant is qualified, it shall issue a charitable gaming license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable gaming license shall be issued in the same manner as regular charitable gaming licenses.
- (6) If the office determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.
- (7) Once a retroactive or regular gaming license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable gaming license if it intends to continue charitable gaming activities, unless the charitable organization has not exceeded the exemption limitations of subsection (1) of this section for a period of two (2) years prior to its exemption request.
- (8) In order to qualify for licensure, a charitable organization shall:
 - (a)
 1. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections; or
 2. Be organized within the Commonwealth of Kentucky as a common school as defined in KRS 158.030, as an institution of higher education as defined in KRS 164A.305, or as a state college or university as provided for in KRS 164.290;
 - (b) Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure. For purposes of this paragraph, an applicant shall demonstrate establishment and continuous operation in Kentucky by its conduct of charitable activities from an office physically located within Kentucky both during the three (3) years immediately preceding its application for licensure and at all times during which it possesses a charitable gaming license. However, a charitable

organization that operates for charitable purposes in more than ten (10) states and whose principal place of business is physically located in a state other than Kentucky may satisfy the requirements of this paragraph if it can document that it has:

1. Been actively engaged in charitable activities and has made reasonable progress, as defined in paragraph (c) of this subsection, in the conduct of charitable activities or the expenditure of funds within Kentucky for a period of three (3) years prior to application for licensure; and
 2. Operated for charitable purposes from an office or place of business in the Kentucky county where it proposes to conduct charitable gaming for at least one (1) year prior to application for licensure, in accordance with paragraph (d) of this subsection;
- (c) Have been actively engaged in charitable activities during the three (3) years immediately prior to application for licensure and be able to demonstrate, to the satisfaction of the office, reasonable progress in accomplishing its charitable purposes during this period. As used in this paragraph, "reasonable progress in accomplishing its charitable purposes" means the regular and uninterrupted conduct of activities within the Commonwealth or the expenditure of funds within the Commonwealth to accomplish relief of poverty, advancement of education, protection of health, relief from disease, relief from suffering or distress, protection of the environment, conservation of wildlife, advancement of civic, governmental, or municipal purposes, or advancement of those purposes delineated in KRS 238.505(3). In order to demonstrate reasonable progress in accomplishing its charitable purposes when applying to renew an existing license, a licensed charitable organization shall additionally provide to the office a detailed accounting regarding its expenditure of charitable gaming net receipts for the purposes described in this paragraph; and
- (d) Have maintained an office or place of business, other than for the conduct of charitable gaming, for one (1) year in the county in which charitable gaming is to be conducted. The office or place of business shall be a separate and distinct address and location from that of any other licensee of the Office of Charitable Gaming; except that up to three (3) licensed charitable organizations may have the same address if they legitimately share office space. For the conduct of a raffle, the county in which charitable gaming is to be conducted shall be the county in which the raffle drawing is to be conducted. However, a charitable organization that has established and maintained an office or place of business in the county for a period of at least one (1) year may hold a raffle drawing ***or a charity fundraising event, including special limited charity fundraising events,*** in a Kentucky county other than that in which the organization's office or place of business is located. ***For raffles, the organization shall notify***~~if the organization notifies~~ the Office of Charitable Gaming in writing of the organization's intent to change the drawing's location at least thirty (30) days before the drawing takes place. This written notification may be transmitted in any commercially reasonable means, authorized by the office, including facsimile and electronic mail. The notification shall set out the place and the county in which the drawing will take place. Approval by the office shall be received prior to the conduct of the raffle drawing at the new location. Any charitable organization that was registered with the county clerk to conduct charitable gaming in a county on or before March 31, 1992, shall satisfy this requirement if it maintained a place of business or operation, other than for the conduct of charitable gaming, for one (1) year prior to application in a Kentucky county adjoining the county in which they were registered. Any licensed charitable organization that qualifies to conduct charitable gaming in an adjoining county under this paragraph, shall be permitted to conduct in its county of residence a charity fundraising event.
- (9) In applying for a license, the information to be submitted shall include but not be limited to the following:
- (a) The name and address of the charitable organization;
 - (b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county in which charitable gaming is to be conducted;
 - (c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;
 - (d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations' bylaws shall satisfy this requirement;

- (e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;
 - (f) The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;
 - (g) The names, addresses, dates of birth, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming. No fewer than two (2) employees or members of the charitable organization who are involved in the management and supervision of charitable gaming, along with the chief executive officer or the director of the applicant organization, shall be designated as chairpersons;
 - (h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;
 - (i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;
 - (j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and correct and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming;
 - (k) An agreement that the charitable organization's records may be released by the Federal Internal Revenue Service to the office; and
 - (l) Any other information the office deems appropriate.
- (10) An organization or a group of individuals that does not meet the licensing requirements of subsection (8) of this section may hold a raffle if the gross receipts do not exceed one hundred fifty dollars (\$150) and all proceeds from the raffle are distributed to a charitable organization. The organization or group of individuals may hold up to three (3) raffles each year, and shall be exempt from complying with the notification, application, and reporting requirements of subsections (2) and (9) of this section.
- (11) The office may issue a license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.
- (12) The office shall charge a fee for each license issued and renewed, not to exceed three hundred dollars (\$300). Specific fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulations and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.
- (13) (a) A licensed charitable organization may place its charitable gaming license in escrow if:
- 1. The licensee notifies the office in writing that it desires to place its license in escrow; and
 - 2. The license is in good standing and the office has not initiated disciplinary action against the licensee.
- (b) During the escrow period, the licensee shall not engage in charitable gaming, and the escrow period shall not be included in calculating the licensee's retention rate under KRS 238.536.
- (c) A charitable organization may apply for reinstatement of its active license and the license shall be reinstated provided:
- 1. The charitable organization continues to qualify for licensure;
 - 2. The charitable organization has not engaged in charitable gaming during the escrow period; and
 - 3. The charitable organization pays a reinstatement fee established by the office.

Section 8. KRS 238.540 is amended to read as follows:

- (1) Except as provided in KRS 238.535(8)(d), charitable gaming shall be conducted by a licensed charitable organization at the location, date, and time which shall be stated on the license. ***The licensee shall request a change in the date, time, or location of a charitable gaming event by mail, electronic mail, or facsimile transmission, and shall submit a lease and an original signature of an officer. The office shall process this request and issue or deny a license within ten (10) days.*** ~~[A license holder shall notify the office at least thirty (30) days in advance of its intent to change its location, date, or time and approval by the office shall be received by the licensee prior to the conduct of charitable gaming at a new location.]~~

- (2) All premises or facilities on which or in which charitable gaming is conducted shall meet all applicable federal, state, and local code requirements relating to life, safety, and health.
- (3) A license to conduct charitable gaming shall be prominently displayed on or in the premises where charitable gaming is conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the office, law enforcement officials, and other interested officials.
- (4) At least one (1) chairperson who is listed on the application for licensure shall be at each charitable gaming activity conducted by the charitable organization and shall be responsible for the administration and conduct of the charitable gaming activity. No person shall serve as chairperson for more than one (1) charitable organization. The chairperson shall be readily identifiable as the chairperson and shall be present on the premises continuously during the charitable gaming activity. Charitable gaming shall be conducted and administered solely by officers, members, and bona fide employees of the licensed charitable organization. Volunteer personnel, who may or may not be members of the licensed charitable organization, may be utilized if each volunteer is readily identifiable as a volunteer. No person engaged in the conduct and administration of charitable gaming shall receive any compensation for services related to the charitable gaming activities, including tipping. No net receipts derived from charitable gaming shall inure to the private benefit or financial gain of any individual. Any effort or attempt to disguise any other type of compensation or private inurement shall be considered an unauthorized diversion of funds and shall be actionable under KRS 238.995.
- (5) No licensed charitable organization shall contract with, or otherwise utilize the services of, any management company, service company, or consultant in managing or conducting any aspect of charitable gaming.
- (6) A licensed charitable organization shall not purchase or lease charitable gaming supplies and equipment from any person not licensed as a distributor in the Commonwealth of Kentucky.
- (7) A licensed charitable organization shall not accept any merchandise prizes donated by any owner, officer, employee, or contractee of a licensed manufacturer, distributor, charitable gaming facility, or any of their affiliates, or any member of their immediate families.
- (8) Any advertisement of charitable gaming, regardless of the medium used, shall contain the name of the charitable organization conducting the charitable gaming and its license number. An advertisement for a bingo session or sessions shall not advertise a bingo prize in excess of the limitation of five thousand dollars (\$5,000) per twenty-four (24) hour period set forth in KRS 238.545(1).

Section 9. KRS 238.505 is amended to read as follows:

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

- (1) "Office" means the Office of Charitable Gaming within the Environmental and Public Protection Cabinet;
- (2) "Charitable gaming" means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of this chapter. Charitable gaming shall not include slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races;
- (3) "Charitable organization" means a nonprofit entity organized for charitable, religious, educational, literary, civic, fraternal, or patriotic purposes;
- (4) "Bingo" means a specific game of chance in which participants use cards or paper sheets, or card-minding device representations thereof, divided into horizontal and vertical spaces, each of which is designated by a letter and a number, and prizes are awarded on the basis of the letters and numbers on the card conforming to a predetermined and preannounced configuration of letters and numbers selected at random;
- (5) "Charity game ticket" means a game of chance using a folded or banded paper ticket, or a paper card with perforated break-open tabs, the face of which is covered or otherwise hidden from view to conceal a number, letter, symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners and shall include charity game tickets that utilize a seal card. Charity game ticket shall include pulltabs;
- (6) "Seal card" means a board or placard used in conjunction with charity game tickets, that contains a seal or seals which, when removed or opened, reveal predesignated winning numbers, letters, or symbols;

- (7) "Raffle" means a game of chance in which a participant is required to purchase a ticket for a chance to win a prize, with the winner to be determined by a random drawing;
- (8) "Charity fundraising event" means ~~an~~^a ~~fundraising~~ activity of limited duration at which games of chance approved by the office are conducted, including bingo, raffles, charity game tickets, special limited charitable games, and wagering on prerecorded horse races, KRS Chapter 230 notwithstanding. Examples of such activities include events that attract patrons for community, social, and entertainment purposes apart from charitable gaming, such as fairs, festivals, carnivals, **licensed charitable gaming organization conventions**, and bazaars;
- (9) "Manufacturer" means a person who assembles from raw materials or subparts any charitable gaming equipment or supplies used in the conduct of charitable gaming, including a person who converts, modifies, and adds to or removes parts from, charitable gaming equipment and supplies. The term shall not include:
 - (a) Any person who services or repairs charitable gaming supplies and equipment, so long as that person replaces or repairs an incidental, malfunctioning, or nonfunctioning part with a similar or identical part; and
 - (b) Any distributor who cuts, collates, and packages for distribution any gaming supplies and equipment purchased in bulk;
- (10) "Distributor" means a person who sells, markets, leases, or otherwise furnishes to a charitable organization charitable gaming equipment or supplies, or both, used in the conduct of charitable gaming. "Distributor" shall not include:
 - (a) A resident printer who prints raffle tickets at the request of a licensed charitable organization; and
 - (b) A licensed charitable organization that affects a one-time donation of charitable gaming supplies or equipment to another licensed charitable organization if the donation is first approved by the office.
- (11) "Charitable gaming facility" means a person, including a licensed charitable organization, that owns or is a lessee of premises which are leased or otherwise made available to two (2) or more licensed charitable organizations during a one (1) year period for the conduct of charitable gaming;
- (12) "Gross receipts" means all moneys collected or received from the conduct of charitable gaming;
- (13) "Adjusted gross receipts" means gross receipts less all cash prizes and the amount paid for merchandise prizes purchased;
- (14) "Net receipts" means adjusted gross receipts less all expenses, charges, fees, and deductions authorized under this chapter;
- (15) "Charitable gaming supplies and equipment" means any material, device, apparatus, or paraphernalia customarily used in the conduct of charitable gaming, including bingo cards and paper, charity game tickets, and other apparatus or paraphernalia used in conducting games of chance at charity fundraising events subject to regulation under this chapter. The term shall not include any material, device, apparatus, or paraphernalia incidental to the game, such as pencils, daubers, playing cards, or other supplies that may be purchased from normal sources of supply;
- (16) "Door prize" means a prize awarded to a person based solely upon the person's attendance at an event or the purchase of a ticket to attend an event;
- (17) "Special limited charitable game" means roulette; blackjack; poker; keno; money wheel; baccarat; pusher-type games; any dice game where the player competes against the house; and any other game of chance as identified, defined, and approved by administrative regulation of the office;
- (18) "Special limited charity fundraising event" means any type of charity fundraising event, commonly known as and operated as a "casino night," "Las Vegas night," or "Monte Carlo night," at which the predominant number or types of games offered for play are special limited charitable games;
- (19) "Session or bingo session" means a single gathering at which a bingo game or series of successive bingo games are played, excluding bingo played at a charity fundraising event;
- (20) "Immediate family" means:
 - (a) Spouse and parents-in-law;

- (b) Parents and grandparents;
 - (c) Children and their spouses; and
 - (d) Siblings and their spouses;
- (21) "Affiliate" means any corporation, partnership, association, or other business or professional entity or any natural person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a licensed manufacturer, distributor, or charitable gaming facility;
 - (22) "Secretary" means the secretary of the Environmental and Public Protection Cabinet;
 - (23) "Executive director" means the executive director of the Office of Charitable Gaming within the Department of Public Protection;
 - (24) "Chairperson" means the chief executive officer and any officer, member, or employee of a licensed charitable organization who will be involved in the management and supervision of charitable gaming as designated in the organization's charitable gaming license application under KRS 238.535(9)(g);
 - (25) "Year" means calendar year except as used in KRS 238.545(4), 238.547(1), and 238.555(7), when "year" means the licensee's license year; and
 - (26) "Card-minding device" means any mechanical, electronic, electromechanical, or computerized device that is interfaced with or connected to equipment used to conduct a game of bingo and that allows a player to store, display, and mark a bingo card face. A card-minding device shall not be designed and manufactured to resemble any electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

Approved April 5, 2007.

CHAPTER 121

(SB 103)

AN ACT relating to registered nurse first assistants.

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

Section 1. KRS 342.035 is amended to read as follows:

- (1) Periodically, the executive director shall promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 and this section shall be fair, current, and reasonable and shall be limited to such charges as are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. In determining what fees are reasonable, the executive director may also consider the increased security of payment afforded by this chapter. On or before November 1, 1994, and on July 1 every two (2) years thereafter, the schedule of fees contained in administrative regulations promulgated pursuant to this section shall be reviewed and updated, if appropriate. Within ten (10) days of April 4, 1994, the executive director shall execute a contract with an appropriately qualified consultant pursuant to which each of the following elements within the workers' compensation system are evaluated; the methods of health care delivery; quality assurance and utilization mechanisms; type, frequency, and intensity of services; risk management programs; and the schedule of fees contained in administrative regulation. The consultant shall present recommendations based on its review to the executive director not later than sixty (60) days following execution of the contract. The executive director shall consider these recommendations and, not later than thirty (30) days after their receipt, promulgate a regulation which shall be effective on an emergency basis, to effect a twenty-five percent (25%) reduction in the total medical costs within the program.
- (2) No provider of medical services or treatment required by this chapter, its agent, servant, employee, assignee, employer, or independent contractor acting on behalf of any medical provider, shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment of any charge, for services covered by a workers' compensation insurance plan for the treatment of a work-related injury or occupational disease, in excess of that provided by a schedule of fees, or cause the credit of any employee to be impaired by reason of the employee's failure or refusal to pay the excess charge. In addition to the penalty imposed in KRS

342.990 for violations of this subsection, any individual who sustains damages by any act in violation of the provisions of this subsection shall have a civil cause of action in Circuit Court to enjoin further violations and to recover the actual damages sustained by the individual, together with the costs of the lawsuit, including a reasonable attorney's fee.

- (3) Where these requirements are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting it. No compensation shall be payable for the death or disability of an employee if his death is caused, or if and insofar as his disability is aggravated, caused, or continued, by an unreasonable failure to submit to or follow any competent surgical treatment or medical aid or advice.
- (4) The executive director shall, by December 1, 1994, promulgate administrative regulations to adopt a schedule of fees for the purpose of regulating charges by medical providers and other health care professionals for testimony presented and medical reports furnished in the litigation of a claim by an injured employee against the employer. The workers' compensation medical fee schedule for physicians, 803 KAR 25:089, having an effective date of February 9, 1995, shall remain in effect until July 1, 1996, or until the effective date of any amendments promulgated by the executive director, whichever occurs first, it being determined that this administrative regulation is within the statutory grant of authority, meets legislative intent, and is not in conflict with the provisions of this chapter. The medical fee schedule and amendments shall be fair, current, and reasonable and otherwise comply with this section.
- (5)
 - (a) To ensure compliance with subsections (1) and (4) of this section, the executive director shall promulgate administrative regulations by December 31, 1994, which require each insurance carrier, self-insured group, and self-insured employer to certify to the executive director the program or plan it has adopted to ensure compliance.
 - (b) In addition, the executive director shall periodically have an independent audit conducted by a qualified independent person, firm, company, or other entity hired by the executive director, in accordance with the personal service contract provisions contained in KRS 45A.690 to 45A.725, to ensure that the requirements of subsection (1) of this section are being met. The independent person, firm, company, or other entity selected by the executive director to conduct the audit shall protect the confidentiality of any information it receives during the audit, shall divulge information received during the audit only to the executive director, and shall use the information for no other purpose than the audit required by this paragraph.
 - (c) The executive director shall promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, self-insured group, or self-insured employer pursuant to this chapter.
 - (d) Periodically, or upon request, the executive director shall report to the Interim Joint Committee on Labor and Industry of the Legislative Research Commission or to the corresponding standing committees of the General Assembly, as appropriate, the degree of compliance or lack of compliance with the provisions of this section and make recommendations thereon.
 - (e) The cost of implementing and carrying out the requirements of this subsection shall be paid from funds collected pursuant to KRS 342.122.
- (6) The executive director may promulgate administrative regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.
- (7) For purposes of this chapter, any medical provider shall charge only its customary fee for photocopying requested documents. However, in no event shall a photocopying fee of a medical provider or photocopying service exceed fifty cents (\$.50) per page. In addition, there shall be no charge for reviewing any records of a medical provider, during regular business hours, by any party who is authorized to review the records and who requests a review pursuant to this chapter.
- (8)
 - (a) The executive director shall develop or adopt practice parameters or guidelines for clinical practice for use by medical providers under this chapter. The executive director may adopt any parameters for clinical practice as developed and updated by the federal Agency for Health Care Policy Research, or the executive director may adopt other parameters for clinical practice which are developed by qualified bodies, as determined by the executive director, with periodic updating based on data collected during the application of the parameters.

- (b) Any provider of medical services under this chapter who has followed the practice parameters or guidelines developed or adopted pursuant to this subsection shall be presumed to have met the appropriate legal standard of care in medical malpractice cases regardless of any unanticipated complication that may thereafter develop or be discovered.
- (9) (a) *Notwithstanding any other provision of law to the contrary, the medical fee schedule adopted under subsection (4) of this section shall require all worker's compensation insurance carriers, worker's compensation self-insured groups, and worker's compensation self-insured employers to provide coverage and payment for surgical first assisting services to registered nurse first assistants as defined in KRS 216B.015.*
- (b) *The provisions of this subsection apply only if reimbursement for an assisting physician would be covered and a registered nurse first assistant who performed the services is used as a substitute for the assisting physician. The reimbursement shall be made directly to the registered nurse first assistant if the claim is submitted by a registered nurse first assistant who is not an employee of the hospital or the surgeon performing the service.*

Approved April 5, 2007.

CHAPTER 122

(HB 145)

AN ACT relating to school districts.

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

Section 1. KRS 159.150 is amended to read as follows:

- (1) Any student who has attained the age of six (6) years, but has not reached his or her eighteenth birthday, who has been absent from school without valid excuse for three (3) or more days, or tardy without valid excuse on three (3) or more days, is a truant.
- (2) Any student enrolled in a public school who has attained the age of eighteen (18) years, but has not reached his or her twenty-first birthday, who has been absent from school without valid excuse for three (3) or more days, or tardy without valid excuse on three (3) or more days, is a truant.
- (3) Any student who has been reported as a truant two (2) or more times is an habitual truant.
- (4) *For the purposes of establishing a student's status as a truant, the student's attendance record is cumulative for an entire school year. If a student transfers from one Kentucky public school to another during a school year, the receiving school shall incorporate the attendance information provided under Section 2 of this Act in the student's official attendance record.*
- (5) A local board of education may adopt reasonable policies that:
 - (a) Require students to comply with compulsory attendance laws;
 - (b) Require truants and habitual truants to make up unexcused absences; and
 - (c) Impose sanctions for noncompliance.

Section 2. KRS 159.170 is amended to read as follows:

- (1) Whenever any child of compulsory school age withdraws from school, the teacher of the child shall ascertain the reason. The fact of the withdrawal and the reason for it shall be immediately transmitted by the teacher to the superintendent of schools of the district in which the school is located. If the child has withdrawn because of change of residence, the next residence shall be ascertained and included in the report.
- (2) *The Kentucky Department of Education shall assure that the student information system facilitates the collection of student data and the transfer of education records among schools and local districts*~~[The superintendent shall thereupon forward a card showing the essential facts regarding the child and stating the place of his new residence to the superintendent of schools of the district to which the child has moved. The Kentucky Board of Education shall prescribe the forms to be used in the operation of this section].~~

- (3) *A school district shall notify the Kentucky Department of Education when a new student enrolls in a school in the district.*
- (4) *The Kentucky Department of Education, upon notification of a student's enrollment in a school, shall forward within ten (10) working days all records regarding the student collected under this section to the receiving district.*

Section 3. KRS 45A.352 is amended to read as follows:

- (1) A local public agency may enter into a guaranteed energy savings contract for innovative solutions for energy conservation measures. The local public agency shall submit a request for proposals. The request for proposals for competitive procurement of guaranteed energy savings contracts shall include the following:
 - (a) The name and address of the governmental unit;
 - (b) The name, address, title, and phone number of a contact person;
 - (c) Notice indicating that the local public agency is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract;
 - (d) The following evaluation criteria for assessing the proposals:
 - 1. Construction management capabilities;
 - 2. Technical approach to facilities included;
 - 3. Financial attributes, as defined by total cost of contract and guaranteed savings and provider's financial strength demonstrating ability to fulfill the guarantee term; and
 - 4. Provider's capability, personnel, track record, and demonstrated ability to accomplish the contract;
 - (e) The date, time, and place where proposals must be received;
 - (f) Any other stipulations and clarifications the local public agency may require; and
 - (g) An overview prepared by the local public agency stating goals or objectives specific to facility needs to be considered by the qualified providers who are responding to the request. Detailed scope of construction is not required.
- (2) Respondents to the request for proposal shall provide the following:
 - (a) A detailed list of the proposed energy conservation measures and the guaranteed savings which shall be supported with calculations. Any guaranteed energy and operational savings shall be determined by using one of the measurement and verification methodologies listed in the United States Department of Energy's "Measurement and Verification Guideline for Federal Energy Projects" or in the "North American Energy Measurement and Verification Protocol." If due to existing data limitations or the nonconformance of specific project characteristics, none of the methods listed in either the United States Department of Energy's "Measurement and Verification Guideline for Federal Energy Projects" or in the "North American Energy Measurement and Verification Protocol" is sufficient for measuring guaranteed savings, the qualified provider shall develop an alternate method that is compatible with one (1) of the two (2);
 - (b) The estimated cost of the proposed energy conservation measures including engineering, construction, commissioning, measurement and verification, annual reconciliation statements, and required on-going services; and
 - (c) Proposed method and costs of financing.
- (3) The value for total cost of the contract minus the calculated savings from the energy conservation measures listed in the qualified provider's proposal, shall be within fifteen percent (15%) of the value for the total cost of the contract minus the calculated savings after the final contract has been negotiated. If the difference between the proposed and the final contract is not within fifteen percent (15%) and the local public agency and the qualified provider are unable to renegotiate the final contract to reconcile the difference between the proposed and final contract values, then the local public agency may:
 - (a) Stop negotiations with the current qualified provider; and

- (b) Select an alternate provider.
- (4) The local public agency may, as a component of the request for proposal, solicit and negotiate additional maintenance services for the affected proposed energy conservation measures. Additional services shall be subject to budget appropriations on an annual basis and may be discontinued at any time over the guarantee period with no negative impact to the guaranteed savings contract.
- (5) The local public agency shall utilize the request for proposal process to enter into a guaranteed energy savings contract. The local public agency may, at its discretion, utilize a request for qualifications, provided that the local public agency solicits qualification statements from multiple potentially qualified providers. The local public agency shall use the qualification statements to select no fewer than two (2) providers and each provider shall then be subject to the request-for-proposal requirement provided in subsections (1) to (4) of this section.
- (6) The local public agency shall select the provider best qualified to meet its needs. The local public agency shall provide public notice of the meeting at which it proposes to award a guaranteed energy savings contract, the name of the parties to the proposed contract, and the purpose of the contract. The public notice shall be made at least ten (10) days prior to the meeting. After reviewing the proposals, a local public agency may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the proposal would not exceed the amount to be saved in either energy or operational costs plus capital cost avoidance within the term of the contract from the date of installation, if the recommendations in the proposal are followed.
- (7) The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the energy or operational costs savings plus capital cost avoidance will meet or exceed the costs of the energy conservation measures within the term of the contract. The qualified provider shall, on an annual basis, reimburse the local public agency for any shortfall in guaranteed energy savings projected in the contract. A qualified provider shall provide a sufficient bond to the local public agency for the installation and the faithful performance of all the measures included in the contract. The guaranteed energy savings contract may provide for payments over a period of time, not to exceed the term of the contract.
- (8) The qualified provider shall provide the local public agency with an annual reconciliation statement. The statement shall disclose any shortfalls or surplus between guaranteed energy and operational savings specified in the guaranteed energy savings contract and actual energy and operational savings incurred during a given guarantee year. The guarantee year shall consist of a twelve (12) month term commencing from the time that the energy conservation measures became fully operational. The qualified provider shall pay the local public agency any short fall in the guaranteed energy and operation savings within thirty (30) days after the total year savings have been determined. If there is a surplus in the actual guaranteed energy and operational savings in a given year, that surplus savings may be carried forward and applied against any possible savings shortfall in the following guarantee year, except that the surplus carried forward is limited to a period not to exceed one (1) year. If the qualified provider pays the local public agency for a short fall in energy or operational savings incurred during a given guarantee year and there is a surplus in energy or operational savings in future guarantee years, the qualified provider shall bill the local public agency for an amount not to exceed the amount of the short fall in the given guarantee year.
- (9) The use of capital cost avoidance shall be subject to the following restrictions:
 - (a) The amount expended shall not exceed fifty percent (50%) of the project cost; and
 - (b) Capital cost avoidance shall be restricted to payment for permanent equipment replacement as follows:
 - 1. Storm windows or doors, multiglazed windows or doors, additional glazing, and reduction in glass area;
 - 2. Replacement of heating, ventilating, or air conditioning major components or systems;
 - 3. New lighting fixtures where required to achieve Illuminating Engineering Society of North America (IES) standards, provided the existing light fixtures shall have been determined to be obsolete and incapable of achieving IES standards; and
 - 4. Life safety system replacements or upgrades which shall have been determined to be necessary to conform with existing state and local codes and standards.

- (10) The ***commissioner of education***~~[chief state school]~~ officer shall review, and approve or disapprove projects from local school districts relating to energy conservation measures under a guaranteed energy savings contract, on the basis of the following guidelines:
- (a) The project design's compliance with technical, health, and safety standards as required by administrative regulation;
 - (b) The availability of general funds, capital outlay allotments under KRS 157.420 or local and state funds from the Facilities Support Program of Kentucky as provided by KRS 157.440, for projects that will use capital cost avoidance;
 - (c) The appropriate use of capital outlay allotments under KRS 157.420, local and state funds from the Facilities Support Program of Kentucky as provided by KRS 157.440, for projects using capital cost avoidance, based on the project's compliance with the district's approved facility plan;
 - (d) The funding capability of the school district; and
 - (e) The financing mechanism and proper financing documentation.
- (11) The request for proposal as provided in subsections (1) to (4) of this section shall be deemed to satisfy the requirements set out in KRS 162.070, and shall not be subject to an award determination based on the lowest competitive bid or a separate bidding process for each energy conservation measure listed in the proposal.
- (12) ***A guaranteed energy savings contract that does not involve construction or the installation of physical improvements shall not require the approval of the commissioner of education and shall not be subject to other requirements of this section.***

Approved April 5, 2007.

CHAPTER 123

(SB 22)

AN ACT relating to the public employee health insurance program.

WHEREAS, the United States Congress has enacted 10 U.S.C. sec. 1097c; and

WHEREAS, the federal government has not yet promulgated administrative regulations to implement this legislation; and

WHEREAS, when this legislation is implemented, to some extent it may preempt state action with regard to contracting to offer TRICARE supplement insurance to public employees; and

WHEREAS, to the extent that 10 U.S.C. sec. 1097c does not preempt state action, the Commonwealth should contract to offer TRICARE supplement insurance to public employees;

NOW, THEREFORE,

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

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

- (1) ***The provisions of this section shall take effect to the extent that they are not preempted by 10 U.S.C. sec. 1097c, other federal law, or federal regulation.***
- (2) ***As used in this section:***
 - (a) ***"TRICARE" means the Department of Defense health care program for active duty and retired uniformed service members and their families; and***
 - (b) ***"Employee" has the same meaning as in KRS 18A.225.***
- (3) ***Beginning with plan year 2009, the Personnel Cabinet, Department for Employee Insurance, shall select and contract with one (1) or more providers to offer a group TRICARE supplement product to eligible employees who are eligible TRICARE beneficiaries.***

- (4) *The Commonwealth of Kentucky shall pay the cost of individual TRICARE supplement insurance to cover the employee, not to exceed the cost of the lowest priced individual plan offered to public employees. The employee shall pay the cost of coverage for his or her spouse and dependent children.*
- (5) *Those employees eligible for TRICARE insurance who elect the Commonwealth of Kentucky sponsored TRICARE supplement insurance shall not be eligible for other coverage offered through the public employee health insurance program. Those employees eligible for TRICARE insurance who choose not to elect the Commonwealth of Kentucky sponsored TRICARE supplement insurance shall continue to be eligible for the coverage offered through the public employee health insurance program.*
- (6) *The secretary of the Personnel Cabinet may promulgate administrative regulations to carry out the provisions of this section.*

Approved April 5, 2007.

CHAPTER 124

(SB 88)

AN ACT relating to drugs.

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

Section 1. KRS 218A.010 is amended to read as follows:

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
 - (a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or
 - (b) The patient or research subject at the direction and in the presence of the practitioner.
- (2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids.
- (3) "Cabinet" means the Cabinet for Health and Family Services.
- (4) "Child" means any person under the age of majority as specified in KRS 2.015.
- (5) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue.
- (6) (a) "Controlled substance analogue", except as provided in subparagraph (b), means a substance:
 - 1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
 - 2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
 - 3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.
- (b) Such term does not include:
 - 1. Any substance for which there is an approved new drug application;
 - 2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or

3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance.
- (7) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.
- (8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery.
- (9) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user.
- (10) "Distribute" means to deliver other than by administering or dispensing a controlled substance.
- (11) "Drug" means:
- (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
 - (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;
 - (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
 - (d) Substances intended for use as a component of any article specified in this subsection.
- It does not include devices or their components, parts, or accessories.
- (12) ***"Good faith prior examination" as used in KRS Chapter 218A and for criminal prosecution only means an in-person medical examination of the patient conducted by the prescribing practitioner or other health-care professional routinely relied upon in the ordinary course of his or her practice, at which time the patient is physically examined and a medical history of the patient is obtained. "In-person" includes telehealth examinations authorized under KRS 11.550 or any other substantially similar program instituted pursuant to KRS 11.550. This subsection shall not be applicable to hospice providers licensed pursuant to KRS Chapter 216B.***
- (13) "Hazardous chemical substance" includes any chemical substance used or intended for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:
- (a) Poses an explosion hazard;
 - (b) Poses a fire hazard; or
 - (c) Is poisonous or injurious if handled, swallowed, or inhaled.
- ~~(14)~~~~(13)~~ "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance or methamphetamine, the control of which is necessary to prevent, curtail, or limit manufacture.
- ~~(15)~~~~(14)~~ "Intent to manufacture" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes but is not limited to statements and a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine.
- ~~(16)~~~~(15)~~ "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer.
- ~~(17)~~~~(16)~~ "Manufacture", except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of

extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:

- (a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
 - (b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
 - (c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.
- (18)~~((17))~~ "Marijuana" means all parts of the plant *Cannabis* sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances.
- (19) ***"Medical history" as used in KRS Chapter 218A and for criminal prosecution only means an accounting of a patient's medical background, including but not limited to prior medical conditions, prescriptions, and family background.***
- (20) ***"Medical order" as used in KRS Chapter 218A and for criminal prosecution only means a lawful order of a specifically identified practitioner for a specifically identified patient for the patient's health-care needs. "Medical order" may or may not include a prescription drug order.***
- (21) ***"Medical record" as used in KRS Chapter 218A and for criminal prosecution only means a record, other than for financial or billing purposes, relating to a patient, kept by a practitioner as a result of the practitioner-patient relationship.***
- (22)~~((18))~~ "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers.
- (23)~~((19))~~ "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
 - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;
 - (c) Opium poppy and poppy straw;
 - (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
 - (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection.
- (24)~~((20))~~ "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.
- (25)~~((21))~~ "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds.
- (26)~~((22))~~ "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- (27)~~((23))~~ "Physical injury" has the same meaning it has in KRS 500.080.

- (28)~~(24)~~ "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- (29)~~(25)~~ "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy.
- (30)~~(26)~~ "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, advanced registered nurse practitioner as authorized under KRS 314.011, or other person licensed, registered, or otherwise permitted *by state or federal law* to *acquire*, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist, veterinarian, or advanced registered nurse practitioner authorized under KRS 314.011 who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail.
- (31) ***"Practitioner-patient relationship" as used in KRS Chapter 218A and for criminal prosecution only means a medical relationship that exists between a patient and a practitioner or the practitioner's designee, after the practitioner or his designee has conducted at least one (1) good faith prior examination.***
- (32)~~(27)~~ "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropractic, veterinarian, optometric practitioner, or advanced registered nurse practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals.
- (33)~~(28)~~ "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216.
- (34)~~(29)~~ "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.
- (35)~~(30)~~ "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter.
- (36)~~(31)~~ "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution.
- (37)~~(32)~~ "Serious physical injury" has the same meaning it has in KRS 500.080.
- (38) ***"Telehealth" has the same meaning it has in KRS 311.550.***
- (39)~~(33)~~ "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant *Cannabis*, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
 2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
 3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.
- (40)~~(34)~~ "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance.
- (41)~~(35)~~ "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution.
- (42)~~(36)~~ "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

Section 2. KRS 218A.140 is amended to read as follows:

- (1) (a) No person shall obtain or attempt to obtain a prescription for a controlled substance by knowingly misrepresenting to, or knowingly withholding information from, a practitioner.
- (b) No person shall procure or attempt to procure the administration of a controlled substance by knowingly misrepresenting to, or withholding information from, a practitioner.
- (c) No person shall obtain or attempt to obtain a controlled substance or procure or attempt to procure the administration of a controlled substance by the use of a false name or the giving of a false address.
- (d) No person shall knowingly make a false statement regarding any prescription, order, report, or record required by this chapter.
- (e) No person shall, for the purpose of obtaining a controlled substance, falsely assume the title of or represent himself to be a manufacturer, wholesaler, distributor, repacker, pharmacist, practitioner, or other authorized person.
- (f) In order to obtain a controlled substance, no person shall present a prescription for a controlled substance that was obtained in violation of this chapter.
- (g) No person shall affix any false or forged label to a package or receptacle containing any controlled substance.
- (2) No person shall possess, manufacture, sell, dispense, prescribe, distribute, or administer any counterfeit substance.
- (3) *No person shall knowingly obtain or attempt to obtain a prescription for a controlled substance without having formed a valid practitioner-patient relationship with the practitioner or his or her designee from whom the person seeks to obtain the prescription.*
- (4) *No person shall knowingly assist a person in obtaining or attempting to obtain a prescription in violation of this chapter.*
- (5) Any person who violates any subsection of this section shall be guilty of a Class D felony for a first offense and a Class C felony for subsequent offenses.

Section 3. KRS 218A.1402 is amended to read as follows:

Any person who commits a criminal conspiracy as defined in KRS 506.040 to ***commit any offense in this chapter***~~traffic in a controlled substance or a controlled substance analogue~~ shall be subject to the same penalties ***as provided for the underlying offense***~~for trafficking in that controlled substance or a controlled substance analogue~~ as specified in this chapter.

Section 4. KRS 218A.202 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy.
- (2) A practitioner or a pharmacist shall not have to pay a fee or tax specifically dedicated to the operation of the system.
- (3) Every dispenser within the Commonwealth or any other dispenser who has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy shall report to the Cabinet for Health and Family Services the data required by this section in a timely manner as prescribed by the cabinet except that reporting shall not be required for:
 - (a) A drug administered directly to a patient; or
 - (b) A drug dispensed by a practitioner at a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours.
- (4) Data for each controlled substance that is dispensed shall include but not be limited to the following:
 - (a) Patient identifier;
 - (b) Drug dispensed;

- (c) Date of dispensing;
 - (d) Quantity dispensed;
 - (e) Prescriber; and
 - (f) Dispenser.
- (5) The data shall be provided in the electronic format specified by the Cabinet for Health and Family Services unless a waiver has been granted by the cabinet to an individual dispenser. The cabinet shall establish acceptable error tolerance rates for data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or inaccurate data shall be corrected upon notification by the cabinet if the dispenser exceeds these error tolerance rates.
- (6) The Cabinet for Health and Family Services shall ***only disclose data to persons and entities authorized to receive that data under this section. Disclosure to any other person or entity, including disclosure in the context of a civil action where the disclosure is sought either for the purpose of discovery or for evidence, is prohibited unless specifically authorized by this section. The Cabinet for Health and Family Services shall be authorized to provide data to:***
- (a) A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;
 - (b) A Kentucky peace officer certified pursuant to KRS 15.380 to 15.404, a certified or full-time peace officer of another state, or a federal peace officer whose duty is to enforce the laws of this Commonwealth, of another state, or of the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;
 - (c) A state-operated Medicaid program;
 - (d) A properly convened grand jury pursuant to a subpoena properly issued for the records;
 - (e) A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient;
 - (f) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Medical Licensure, for any physician who is:
 - 1. Associated in a partnership or other business entity with a physician who is already under investigation by the Board of Medical Licensure for improper prescribing practices;
 - 2. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or
 - 3. In a designated geographic area for which a report on another physician in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area;
 - (g) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Nursing, for any advanced registered nurse practitioner who is:
 - 1. Associated in a partnership or other business entity with a physician who is already under investigation by the Kentucky Board of Medical Licensure for improper prescribing practices;
 - 2. Associated in a partnership or other business entity with an advanced registered nurse practitioner who is already under investigation by the Board of Nursing for improper prescribing practices;
 - 3. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or
 - 4. In a designated geographic area for which a report on a physician or another advanced registered nurse practitioner in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area; or
 - (h) A judge or a probation or parole officer administering a diversion or probation program of a criminal defendant arising out of a violation of this chapter or of a criminal defendant who is documented by the

court as a substance abuser who is eligible to participate in a court-ordered drug diversion or probation program.

- (7) The Department for Medicaid Services may use any data or reports from the system for the purpose of identifying Medicaid recipients whose usage of controlled substances may be appropriately managed by a single outpatient pharmacy or primary care physician.
- (8) A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except by order of a court of competent jurisdiction ***and only to a person or entity authorized to receive the data or the report under this section***, except that:
 - (a) A peace officer specified in subsection (6)(b) of this section who is authorized to receive data or a report may share that information with other peace officers specified in subsection (6)(b) of this section authorized to receive data or a report if the peace officers specified in subsection (6)(b) of this section are working on a bona fide specific investigation involving a designated person. Both the person providing and the person receiving the data or report under this paragraph shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by each law enforcement agency engaged in the investigation; and
 - (b) A representative of the Department for Medicaid Services may share data or reports regarding overutilization by Medicaid recipients with a board designated in subsection (6)(a) of this section, or with a law enforcement officer designated in subsection (6)(b) of this section; and
 - (c) The Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.
- (9) The Cabinet for Health and Family Services, all peace officers specified in subsection (6)(b) of this section, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.
- (10) The data and any report obtained therefrom shall not be a public record, except that the Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.
- (11) ***Intentional***~~[Knowing]~~ failure by a dispenser to transmit data to the cabinet as required by subsection (3), (4), or (5) of this section shall be a Class A misdemeanor ***for the first offense and a Class D felony for each subsequent offense***.
- (12) ***Intentional***~~[Knowing]~~ disclosure of transmitted data to a person not authorized by subsection (6) to subsection (8) of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide specific investigation, shall be a Class D felony ***for the first offense and a Class C felony for each subsequent offense***.
- (13) The Commonwealth Office of Technology, in consultation with the Cabinet for Health and Family Services, shall submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot project to study a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances. The pilot project shall:
 - (a) Be conducted in two (2) rural counties that have an interactive real-time electronic information system in place for monitoring patient utilization of health and social services through a federally funded community access program; and
 - (b) Study the use of an interactive system that includes a relational data base with query capability.
- (14) Provisions in this section that relate to data collection, disclosure, access, and penalties shall apply to the pilot project authorized under subsection (13) of this section.
- (15) The Cabinet for Health and Family Services may limit the length of time that data remain in the electronic system. Any data removed from the system shall be archived and subject to retrieval within a reasonable time after a request from a person authorized to review data under this section.

- (16) (a) The Cabinet for Health and Family Services shall work with each board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances for the development of a continuing education program about the purposes and uses of the electronic system for monitoring established in this section.
- (b) The cabinet shall work with the Kentucky Bar Association for the development of a continuing education program for attorneys about the purposes and uses of the electronic system for monitoring established in this section.
- (c) The cabinet shall work with the Justice Cabinet for the development of a continuing education program for law enforcement officers about the purposes and users of the electronic system for monitoring established in this section.

SECTION 5. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of criminal possession of a medical record when he or she possesses a medical record with the intent to unlawfully obtain a controlled substance by:*
 - (a) *Falsifying, altering, or creating a medical record; or*
 - (b) *Selling or unlawfully transferring the medical record to another person.*
- (2) *Any person who violates any subsection of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of theft of a medical record when he or she unlawfully takes or exercises control over a medical record belonging to another person with intent to violate this chapter.*
- (2) *Any person who violates any subsection of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of criminal falsification of a medical record when he or she knowingly and unlawfully falsifies, alters, or creates a medical record for the purpose of obtaining or attempting to obtain a controlled substance with intent to violate this chapter.*
- (2) *Any person who violates any subsection of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.*

Section 8. KRS 315.010 is amended to read as follows:

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

- (1) "Administer" means the direct application of a drug to a patient or research subject by injection, inhalation, or ingestion, whether topically or by any other means;
- (2) "Association" means the Kentucky Pharmacists Association;
- (3) "Board" means the Kentucky Board of Pharmacy;
- (4) "Collaborative care agreement" means a written agreement between a specifically identified individual practitioner and a pharmacist who is specifically identified, whereby the practitioner outlines a plan of cooperative management of a specifically identified individual patient's drug-related health care needs that fall within the practitioner's statutory scope of practice. The agreement shall be limited to specification of the drug-related regimen to be provided and any tests which may be necessarily incident to its provisions; stipulated conditions for initiating, continuing, or discontinuing drug therapy; directions concerning the monitoring of drug therapy and stipulated conditions which warrant modifications to dose, dosage regimen, dosage form, or route of administration;
- (5) "Compound" or "compounding" means the preparation or labeling of a drug pursuant to or in anticipation of a valid prescription drug order including, but not limited to, packaging, intravenous admixture or manual combination of drug ingredients. Compounding, as used in this chapter, shall not preclude simple reconstitution, mixing, or modification of drug products prior to administration by nonpharmacists;

- (6) "Confidential information" means information which is accessed or maintained by a pharmacist in a patient's record, or communicated to a patient as part of patient counseling, whether it is preserved on paper, microfilm, magnetic media, electronic media, or any other form;
- (7) "Continuing education unit" means ten (10) contact hours of board approved continuing pharmacy education. A "contact hour" means fifty (50) continuous minutes without a break period;
- (8) "Dispense" or "dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug;
- (9) "Drug" means any of the following:
 - (a) Articles recognized as drugs or drug products in any official compendium or supplement thereto; or
 - (b) Articles, other than food, intended to affect the structure or function of the body of man or other animals; or
 - (c) Articles, including radioactive substances, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or
 - (d) Articles intended for use as a component of any articles specified in paragraphs (a) to (c) of this subsection;
- (10) "Drug regimen review" means retrospective, concurrent, and prospective review by a pharmacist of a patient's drug-related history, including but not limited to, the following areas:
 - (a) Evaluation of prescription drug orders and patient records for:
 - 1. Known allergies;
 - 2. Rational therapy contraindications;
 - 3. Appropriate dose and route of administration;
 - 4. Appropriate directions for use; or
 - 5. Duplicative therapies.
 - (b) Evaluation of prescription drug orders and patient records for drug-drug, drug-food, drug-disease, and drug-clinical laboratory interactions;
 - (c) Evaluation of prescription drug orders and patient records for adverse drug reactions; or
 - (d) Evaluation of prescription drug orders and patient records for proper utilization and optimal therapeutic outcomes;
- (11) "Immediate supervision" means under the physical and visual supervision of a pharmacist;
- ~~{(12) "Incidental" as used in KRS 315.0351(1) means dispensing fewer than twenty five (25) prescriptions in a calendar month;}~~
- ~~{(12)}~~~~{(13)}~~ (12) "Manufacturer" means any person, except a pharmacist compounding in the normal course of professional practice, within the Commonwealth engaged in the commercial production, preparation, propagation, compounding, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging of a drug or the labeling or relabeling of its container;
- ~~{(13)}~~~~{(14)}~~ (13) "Medical order" means a lawful order of a specifically-identified practitioner for a specifically-identified patient for the patient's health care needs. "Medical order" may or may not include a prescription drug order;
- ~~{(14)}~~~~{(15)}~~ (14) "Nonprescription drugs" means nonnarcotic medicines or drugs which may be sold without a prescription and are prepackaged and labeled for use by the consumer in accordance with the requirements of the statutes and regulations of this state and the federal government;
- ~~{(15)}~~~~{(16)}~~ (15) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;

~~(16)~~~~(17)~~ "Pharmacist intern" means a natural person who is:

- (a) Currently certified by the board to engage in the practice of pharmacy under the direction of a licensed pharmacist and who satisfactorily progresses toward meeting the requirements for licensure as a pharmacist;
- (b) A graduate of an approved college or school of pharmacy or a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;
- (c) A qualified applicant awaiting examination for licensure as a pharmacist or the results of an examination for licensure as a pharmacist; or
- (d) An individual participating in a residency or fellowship program approved by the board for internship credit;

~~(17)~~~~(18)~~ "Pharmacy" means every place where:

- (a) Drugs are dispensed under the direction of a pharmacist;
- (b) Prescription drug orders are compounded under the direction of a pharmacist; or
- (c) A registered pharmacist maintains patient records and other information for the purpose of engaging in the practice of pharmacy, whether or not prescription drug orders are being dispensed;

~~(18)~~~~(19)~~ "Pharmacy technician" means a natural person who works under the immediate supervision, or general supervision if otherwise provided for by statute or administrative regulation, of a pharmacist for the purpose of assisting a pharmacist with the practice of pharmacy;

~~(19)~~~~(20)~~ "Practice of pharmacy" means interpretation, evaluation, and implementation of medical orders and prescription drug orders; responsibility for dispensing prescription drug orders, including radioactive substances; participation in drug and drug-related device selection; administration of medications or biologics in the course of dispensing or maintaining a prescription drug order; the administration of adult immunizations pursuant to prescriber-approved protocols; drug evaluation, utilization, or regimen review; maintenance of patient pharmacy records; and provision of patient counseling and those professional acts, professional decisions, or professional services necessary to maintain and manage all areas of a patient's pharmacy-related care, including pharmacy-related primary care as defined in this section;

~~(20)~~~~(21)~~ "Practitioner" has the same meaning given in KRS 217.015(35);

~~(21)~~~~(22)~~ "Prescription drug" means a drug which:

- (a) Under federal law is required to be labeled with either of the following statements:
 - 1. "Caution: Federal law prohibits dispensing without prescription"; or
 - 2. "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or
 - 3. **"Rx Only"; or**
 - 4. **"Rx"; or**
- (b) Is required by any applicable federal or state law or administrative regulation to be dispensed only pursuant to a prescription drug order or is restricted to use by practitioners;

~~(22)~~~~(23)~~ "Prescription drug order" means an original or new order from a practitioner for drugs, drug-related devices or treatment for a human or animal, including orders issued through collaborative care agreements. Lawful prescriptions result from a valid practitioner-patient relationship, are intended to address a legitimate medical need, and fall within the prescribing practitioner's scope of professional practice;

~~(23)~~~~(24)~~ "Pharmacy-related primary care" means the pharmacists' activities in patient education, health promotion, assistance in the selection and use of over-the-counter drugs and appliances for the treatment of common diseases and injuries as well as those other activities falling within their statutory scope of practice;

~~(24)~~~~(25)~~ "Society" means the Kentucky Society of Health-Systems Pharmacists;

~~(25)~~~~(26)~~ "Supervision" means the presence of a pharmacist on the premises to which a pharmacy permit is issued, who is responsible, in whole or in part, for the professional activities occurring in the pharmacy; and

~~(26)~~~~(27)~~ "Wholesaler" means any person who legally buys drugs for resale or distribution to persons other than patients or consumers.

Section 9. KRS 315.035 is amended to read as follows:

- (1) No person shall operate a pharmacy within this Commonwealth, physically or by means of the Internet, facsimile, phone, mail, or any other means, without having first obtained a permit as provided for in KRS Chapter 315. An application for a permit to operate a pharmacy shall be made to the board upon forms provided by it and shall contain such information as the board requires, which may include affirmative evidence of ability to comply with such reasonable standards and rules and regulations as may be prescribed by the board. Each application shall be accompanied by a reasonable permit fee to be set by administrative regulation promulgated by the board pursuant to KRS Chapter 13A, not to exceed two hundred fifty dollars (\$250).
- (2) Upon receipt of an application of a permit to operate a pharmacy, accompanied by the permit fee not to exceed two hundred fifty dollars (\$250), the board shall issue a permit if the pharmacy meets the standards and requirements of KRS Chapter 315 and the rules and regulations of the board. The board shall refuse to renew any permit to operate unless the pharmacy meets the standards and requirements of KRS Chapter 315 and the rules and regulations of the board. The board shall act upon an application for a permit to operate within thirty (30) days after the receipt thereof; provided, however, that the board may issue a temporary permit to operate in any instance where it considers additional time necessary for investigation and consideration before taking final action upon the application. In such event, the temporary permit shall be valid for a period of thirty (30) days, unless extended.
- (3) A separate permit to operate shall be required for each pharmacy.
- (4) Each permit to operate a pharmacy, unless sooner suspended or revoked, shall expire on June 30 following its date of issuance and be renewable annually thereafter upon proper application accompanied by such reasonable renewal fee as may be set by administrative regulation of the board, not to exceed two hundred fifty dollars (\$250) nor to increase more than twenty-five dollars (\$25) per year. An additional fee not to exceed the annual renewal fee may be assessed and set by administrative regulation as a delinquent renewal penalty for failure to renew by June 30 of each year.
- (5) Permits to operate shall be issued only for the premises and persons named in the application and shall not be transferable; provided however, that a buyer may operate the pharmacy under the permit of the seller pending a decision by the board of an application which shall be filed by the buyer with the board at least five (5) days prior to the date of sale.
- (6) The board may promulgate rules and regulations to assure that proper equipment and reference material is on hand considering the nature of the pharmaceutical practice conducted at the particular pharmacy and to assure reasonable health and sanitation standards for areas within pharmacies which are not subject to health and sanitation standards promulgated by the Kentucky Cabinet for Health and Family Services or a local health department.
- (7) Each pharmacy shall comply with KRS 218A.202.
- (8) Any pharmacy within the Commonwealth ***that dispenses more than twenty-five percent (25%) of its total prescription volume as a result of an original prescription order received or solicited***~~doing business primarily or exclusively~~ by use of the Internet, ***including but not limited to electronic mail***, shall, prior to obtaining a permit, receive and display in every medium in which it advertises itself a seal of approval for the National Association of Boards of Pharmacy certifying that it is a Verified Internet Pharmacy Practice Site (VIPPS) ***or a seal certifying approval of a substantially similar program approved by the Kentucky Board of Pharmacy. VIPPS, or any other substantially similar program approved by the Kentucky Board of Pharmacy, accreditation***~~certification~~ shall be maintained and remain current.
- (9) Any pharmacy within the Commonwealth doing business~~primarily or exclusively~~ by use of the Internet shall certify the percentage of its annual business conducted via the Internet and submit such supporting documentation as requested by the board, and in a form or application required by the board, when it applies for permit or renewal.

Section 10. KRS 315.0351 is amended to read as follows:

- (1) Every person or pharmacy located outside this Commonwealth which ~~[, other than on an incidental basis,]~~ does business, physically or by means of the Internet, facsimile, phone, mail, or any other means, inside this Commonwealth within the meaning of KRS Chapter 315, shall hold a current pharmacy permit as provided in KRS 315.035(1) and (4) issued by the Kentucky Board of Pharmacy. The pharmacy shall be designated an "out-of-state pharmacy" and the permit shall be designated an "out-of-state pharmacy permit." The fee for the permit shall not exceed the current in-state pharmacy permit fee as provided under KRS 315.035.
- (2) Every out-of-state pharmacy granted an out-of-state pharmacy permit by the board shall disclose to the board the location, names, and titles of all principal corporate officers and all pharmacists who are dispensing prescription drugs to residents of the Commonwealth. A report containing this information shall be made to the board on an annual basis and within thirty (30) days after any change of office, corporate officer, or pharmacist.
- (3) Every out-of-state pharmacy granted an out-of-state pharmacy permit shall comply with all statutorily-authorized directions and requests for information from any regulatory agency of the Commonwealth and from the board in accordance with the provisions of this section. The out-of-state pharmacy shall maintain at all times a valid unexpired permit, license, or registration to conduct the pharmacy in compliance with the laws of the jurisdiction in which it is a resident. As a prerequisite to seeking a permit from the Kentucky Board of Pharmacy, the out-of-state pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the jurisdiction in which it is located. Thereafter, the out-of-state pharmacy granted a permit shall submit to the Kentucky Board of Pharmacy a copy of any subsequent inspection report on the pharmacy conducted by the regulatory or licensing body of the jurisdiction in which it is located.
- (4) Every out-of-state pharmacy granted an out-of-state pharmacy permit by the board shall maintain records of any controlled substances or dangerous drugs or devices dispensed to patients in the Commonwealth so that the records are readily retrievable from the records of other drugs dispensed.
- (5) Records for all prescriptions delivered into Kentucky shall be readily retrievable from the other prescription records of the out-of-state pharmacy.
- (6) Each out-of-state pharmacy shall, during its regular hours of operation, but not less than six (6) days per week and for a minimum of forty (40) hours per week, provide a toll-free telephone service directly to the pharmacist in charge of the out-of-state pharmacy and available to both the patient and each licensed and practicing in-state pharmacist for the purpose of facilitating communication between the patient and the Kentucky pharmacist with access to the patient's prescription records. A toll-free number shall be placed on a label affixed to each container of drugs dispensed to patients within the Commonwealth.
- (7) Each out-of-state pharmacy shall have a pharmacist in charge who is licensed to engage in the practice of pharmacy by the Commonwealth that shall be responsible for compliance by the pharmacy with the provisions of this section.
- (8) Each out-of-state pharmacy shall comply with KRS 218A.202.
- (9) Any out-of-state pharmacy ***that dispenses more than twenty-five percent (25%) of its total prescription volume as a result of an original prescription order received or solicited*** ~~[doing business, primarily or exclusively]~~ by use of the Internet, ***including but not limited to electronic mail***, shall ~~[, prior to obtaining a permit,]~~ receive and display in every medium in which it advertises itself a seal of approval for the National Association of Boards of Pharmacy certifying that it is a Verified Internet Pharmacy Practice Site (VIPPS) ***or a seal certifying approval of a substantially similar program approved by the Kentucky Board of Pharmacy. VIPPS, or any other substantially similar accreditation, [certification]*** shall be maintained and remain current.
- (10) Any out-of-state pharmacy doing business ***in the Commonwealth of Kentucky*** ~~[primarily or exclusively by use of the Internet]~~ shall certify the percentage of its annual business conducted via the Internet ***and electronic mail*** and submit such supporting documentation as requested by the board, and in a form or application required by the board, when it applies for permit or renewal.
- (11) ***Any pharmacy doing business within the Commonwealth of Kentucky shall use the address on file with the Kentucky Board of Pharmacy as the return address on the labels of any package shipped into or within the Commonwealth. The return address shall be placed on the package in a clear and prominent manner.***
- (12) ***The Kentucky Board of Pharmacy may waive the permit requirements of this chapter for an out-of-state pharmacy that only does business within the Commonwealth of Kentucky in limited transactions.***

Section 11. KRS 315.320 is amended to read as follows:

- (1) A person or pharmacy is guilty of a Class C felony if the person or pharmacy, located inside or outside this Commonwealth, is not licensed **by the Commonwealth of Kentucky** to engage in the practice of pharmacy and knowingly:
 - (a) ~~**Communicates**~~~~[Uses or attempts to use the Internet, in whole or in part, to communicate]~~ with ~~a~~~~[or obtain information from another]~~ person in this Commonwealth; and
 - (b) Uses or attempts to use such communication or information, in whole, or in part, to:
 1. Fill or refill a prescription for a prescription drug for the other person; or
 2. Deliver, cause, allow, or aid in the delivery of a controlled substance, imitation controlled substance, counterfeit substance or prescription drug to the other person.
- (2) A person or pharmacy is guilty of a Class B felony if the substance or drug dispensed in subsection (1) of this section:
 - (a) Is classified in Schedule I; or
 - (b) Proximately causes serious physical injury or the death of the intended recipient of the substance or drug or any other person.
- (3) The court shall not grant probation to or suspend the sentence of a person punished pursuant to subsection (2) of this section.
- (4) A person who knowingly aids another in any act or transaction that violates the provisions of subsection (1) of this section is guilty of a Class C felony.
- (5) A person who knowingly aids another in any act or transaction that violates the provisions of subsection (2) of this section is guilty of a Class B felony.
- (6) A person or pharmacy may be prosecuted, convicted, and punished for a violation of this section whether or not the person is prosecuted, convicted, or punished for a violation of any other statute based upon the same act or transaction.
- (7) This section shall not apply to a licensed pharmacist or **permitted** pharmacy that inadvertently allows its license or permit **issued by the Kentucky Board of Pharmacy**~~[issued by a board of pharmacy]~~, to lapse **for a period of less than thirty (30) days**.
- (8) ***This section shall not apply to authorized agents of a pharmacy with a valid permit issued by the Kentucky Board of Pharmacy.***
- (9) ***This section shall not apply to an authorized agent of a pharmacy that inadvertently allows its permit issued by the Kentucky Board of Pharmacy, to lapse for a period of less than thirty (30) days.***
- (10) ***Unless a more specific penalty applies within this chapter, anyone who uses the Internet to communicate and facilitate the sale of controlled substances, except as specifically provided for in this chapter, may be prosecuted under KRS Chapter 218A.***

Section 12. KRS 218A.1446 is amended to read as follows:

- (1) Any nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers shall be dispensed, sold, or distributed only by a registered pharmacist, a pharmacy intern, or a pharmacy technician.
- (2) Any person purchasing, receiving, or otherwise acquiring any nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers shall:
 - (a) Produce a government issued photo identification showing the date of birth of the person; and
 - (b) Sign a written log or record showing the:
 1. Date of the transaction;
 2. Name, date of birth, and address of the person making the purchase; and

3. The amount and name of the compound, mixture, or preparation.

An electronic recordkeeping mechanism may be used in lieu of the written log or record described in paragraph (b) of this subsection, provided the mechanism is approved by the Office of Drug Control Policy.

- (3) A log, as described in subsection (2) of this section, shall be kept of each day's transactions. The registered pharmacist, a pharmacy intern, or a pharmacy technician shall initial the entry of each sale in the log, evidencing completion of each transaction. The log shall be:
- (a) Kept for a period of two (2) years;~~and~~
 - (b) Subject to random and warrantless inspection by city, county, or state law enforcement officers; **and**
 - (c) *An electronic recordkeeping mechanism may be required in lieu of the written log or record described in subsection (2)(b) of this section if the costs of establishing and maintaining the mechanism are borne by the Commonwealth of Kentucky. Pursuant to administrative regulations promulgated by the Drug Enforcement and Professional Standards Branch and the Office of Drug Control Policy, pharmacies requesting an exemption to electronic reporting may file an exemption request to the above listed agencies. Any exemption may be granted upon a showing of imposition of additional cost by the pharmacy.*
- (4) (a) Intentional failure of a registered pharmacist, a pharmacy intern, or a pharmacy technician to make an accurate entry of a sale of a product or failure to maintain the log records as required by this section may subject him or her to a fine of not more than one thousand dollars (\$1,000) for each violation and may be evidence of a violation of KRS 218A.1438.
- (b) If evidence exists that the pharmacist's, the pharmacy intern's, or the pharmacist technician's employer fails, neglects, or encourages incorrect entry of information by improper training, lack of supervision or oversight of the maintenance of logs, or other action or inaction, the employer shall also face liability under this section and any other applicable section of this chapter.
- (c) It shall be a defense to a violation of this section that the person proves that circumstances beyond the control of the registered pharmacist, pharmacy intern, or pharmacy technician delayed or prevented the making of the record or retention of the record as required by this section. Examples of circumstances beyond the control of the registered pharmacist, pharmacy intern, or pharmacy technician include but are not limited to:
- 1. Fire, natural or manmade disaster, loss of power, and similar events;
 - 2. Robbery, burglary, shoplifting, or other criminal act by a person on the premises;
 - 3. A medical emergency suffered by the registered pharmacist, pharmacy intern, or pharmacy technician, another employee of the establishment, a customer, or any other person on the premises; or
 - 4. Some other circumstance that establishes that an omission was inadvertent.
- (5) No person shall purchase, receive, or otherwise acquire any product, mixture, or preparation or combinations of products, mixtures, or preparations containing more than nine (9) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers within any thirty (30) day period provided this limit shall not apply to any quantity of product, mixture or preparation dispensed pursuant to a valid prescription. In addition to the nine (9) gram restriction, no person shall purchase, receive, or otherwise acquire more than three (3) packages of any product, mixture, or preparation containing ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers during each transaction.
- (6) A person under eighteen (18) years of age shall not purchase or attempt to purchase any quantity of a ephedrine, pseudoephedrine, or phenylpropanolamine product as described in subsection (1) of this section. No person shall aid or assist a person under eighteen (18) years of age in purchasing any quantity of a ephedrine, pseudoephedrine, or phenylpropanolamine product as described in subsection (1) of this section.
- (7) The requirements of this section shall not apply to any compounds, mixtures, or preparation containing ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers which are in liquid, liquid capsule, or gel capsule form or to any compounds, mixtures, or preparations containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts or optical isomers which are

deemed to be not subject to abuse upon joint review and agreement of the Office of Drug Control Policy, the Board of Pharmacy, and the Cabinet for Health and Family Services.

- (8) The provisions of this section shall not apply to a:
- (a) Licensed manufacturer manufacturing and lawfully distributing a product in the channels of commerce;
 - (b) Wholesaler lawfully distributing a product in the channels of commerce;
 - (c) ***A pharmacy with a valid permit from the Kentucky Board of Pharmacy***~~Licensed pharmacy~~;
 - (d) Health care facility licensed pursuant to KRS Chapter 216B;
 - (e) Licensed long-term care facility;
 - (f) Government-operated health department;
 - (g) Physician's office;
 - (h) Publicly operated prison, jail, or juvenile correctional facility, or a private adult or juvenile correctional facility under contract with the Commonwealth;
 - (i) Public or private educational institution maintaining a health care program; or
 - (j) Government-operated or industrial medical facility serving its own employees.
- (9) The provisions of this section shall supersede and preempt all local laws, ordinances, and regulations pertaining to the sale of any compounds, mixtures, or preparation containing ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

Section 13. KRS 218A.420 is amended to read as follows:

- (1) All property which is subject to forfeiture under this chapter shall be disposed of in accordance with this section.
- (2) All controlled substances which are seized and forfeited under this chapter shall be ordered destroyed by the order of the trial court unless there is a legal use for them, in which case they may be sold to a proper buyer as determined by the Cabinet for Health and Family Services by promulgated regulations. Property other than controlled substances may be destroyed on order of the trial court.
- (3) When property other than controlled substances is forfeited under this chapter ***and not retained for official use, it may be sold for its cash value***~~the law enforcement agency may, subject to the provisions of KRS 218A.435:~~
 - ~~(a) Retain it for official use;~~
 - ~~(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be paid into the fund created in KRS 218A.435.~~ Any sale shall be a public sale advertised pursuant to KRS Chapter 424.
- (4) ***Coin, currency, or the proceeds from the sale of property forfeited shall be distributed as follows:***
 - (a) ***Eighty-five percent (85%) shall be paid to the law enforcement agency or agencies which seized the property, to be used for direct law enforcement purposes; and***
 - (b) ***Fifteen percent (15%) shall be paid to the Office of the Attorney General, or in the alternative, the fifteen percent (15%) shall be paid to the Prosecutors Advisory Council for deposit on behalf of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding, as determined by the court pursuant to subsection (9) of this section. Notwithstanding KRS Chapter 48, these funds shall be exempt from any state budget reduction acts.***

The moneys identified in this subsection are intended to supplement any funds otherwise appropriated to the recipient and shall not supplant other funding of any recipient.

- (5) ***The Attorney General, after consultation with the Prosecutors Advisory Council, shall promulgate administrative regulations to establish the specific purposes for which these funds shall be expended.***
- (6) ***Each state and local law enforcement agency that seizes property for the purpose of forfeiture under KRS 218A.410 shall, prior to receiving any forfeited property, adopt policies relating to the seizure, maintenance,***

storage, and care of property pending forfeiture which are in compliance with or substantially comply with the model policy for seizure of forfeitable assets by law enforcement agencies published by the Department of Criminal Justice Training. However, a state or local law enforcement agency may adopt policies that are more restrictive on the agency than those contained in the model policy and that fairly and uniformly implement the provisions of this chapter.

- (7) *Each state or local law enforcement agency that seizes property for the purpose of forfeiture under KRS 218A.410 shall, prior to receiving forfeited property, have one (1) or more officers currently employed attend asset-forfeiture training approved by the Kentucky Law Enforcement Council, which shall approve a curriculum of study for asset-forfeiture training.*
- (8) *Other provisions of this section notwithstanding, any vehicle seized by a law enforcement agency which is forfeited pursuant to this chapter may be retained by the seizing agency for official use or sold within its discretion. Proceeds from the sale shall remain with the agency. The moneys shall be utilized for purposes consistent with KRS 218A.405 to 218A.460. The seizing agency shall be required to pay any bona fide perfected security interest on any vehicle so forfeited.*
- (9) *When money or property is seized in a joint operation involving more than one (1) law enforcement agency or prosecutorial office, the apportionment of funds to each pursuant to subsection (4) of this section shall be made among the agencies in a manner to reflect the degree of participation of each agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based. The trial court shall determine the proper division and include the determination in the final order of forfeiture.*

Section 14. KRS 218A.240 is amended to read as follows:

- (1) All police officers and deputy sheriffs directly employed full-time by state, county, city, ~~or~~ urban-county, **or consolidated local** governments, the State Police, the Cabinet for Health and Family Services, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, shall enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.
- (2) For the purpose of enforcing the provisions of this chapter, the designated agents of the Cabinet for Health and Family Services shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths, to enter upon premises at all times for the purpose of making inspections, to seize evidence, to interrogate all persons, to require the production of prescriptions, of books, papers, documents or other evidence, to employ special investigators, and to expend funds for the purpose of obtaining evidence and to use data obtained under KRS 218A.202(7) in any administrative proceeding before the cabinet.
- (3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the Cabinet for Health and Family Services.
- (4) Designated agents of the Cabinet for Health and Family Services and the Kentucky Board of Pharmacy are empowered to remove from the files of a pharmacy or the custodian of records for that pharmacy any controlled substance prescription or other controlled substance record upon tendering a receipt. The receipt shall be sufficiently detailed to accurately identify the record. A receipt for the record shall be a defense to a charge of failure to maintain the record.
- (5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter, or to forfeit any property subject to forfeiture under KRS 218A.410, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.
 - (a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.
 - (b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.

- (c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his *or her* costs, including a reasonable attorney's fee.
 - (d) Distribution of funds under this section shall be made in the same manner as in *Section 13 of this Act* [KRS 218A.435], except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his *or her* percentage of the funds shall go to the agency initiating the forfeiture action.
- (6) The Cabinet for Health and Family Services shall make or cause to be made examinations of samples secured under the provisions of this chapter to determine whether any provision has been violated.
- (7) (a) The Cabinet for Health and Family Services shall use the data compiled in the electronic system created in KRS 218A.202 for investigations, research, statistical analysis, and educational purposes, and shall proactively identify trends in controlled substance usage and other potential problem areas. Only cabinet personnel who have undergone training for the electronic system and who have been approved to use the system shall be authorized access to the data and reports under this subsection. The cabinet shall notify a board responsible for the licensure, regulation, or discipline of each practitioner, pharmacist, or other person who is authorized to prescribe, administer, or dispense controlled substances, if a report or analysis conducted under this subsection indicates that further investigation about inappropriate or unlawful prescribing or dispensing may be necessary by the board.
- (b) The cabinet shall develop criteria, in collaboration with the Board of Medical Licensure and the Board of Pharmacy, to be used to generate trend reports from the data obtained by the system. Meetings at which the criteria are developed shall be meetings, as defined in KRS 61.805, that comply with the open meetings laws, KRS 61.805 to 61.850.
- (c) The cabinet shall, on a quarterly basis, publish trend reports from the data obtained by the system.
- (d) Peace officers authorized to receive data under KRS 218A.202 may request trend reports not specifically published pursuant to paragraph (c) of this subsection. A report under this paragraph may be based upon the criteria developed under paragraph (b) of this subsection or upon any of the data collected pursuant to KRS 218A.202(4), except that the report shall not identify an individual prescriber, dispenser, or patient.
- (e) No trend report generated under this subsection shall identify an individual prescriber, dispenser, or patient.

Section 15. KRS 218A.440 is amended to read as follows:

- (1) Each law enforcement agency seizing money or property pursuant to KRS 218A.415 shall, at the close of each fiscal year, file a statement with the Auditor of Public Accounts, and with the secretary of justice containing, a detailed listing of all money and property seized in that fiscal year and the disposition thereof. The listing shall identify all property so seized.
- (2) Any agency failing to report as required by this section shall be liable to the state for the full value of all property and money so seized. The Attorney General shall institute civil actions for recovery of money or property obtained or retained in violation of KRS 218A.405 to 218A.460.
- (3) The Auditor of Public Accounts, the secretary of justice or the Attorney General may at any time initiate an inquiry to determine that ~~any agency is utilizing proceeds from the fund established in KRS 218A.435 in accordance with law, or an inquiry to determine that~~ property is being forfeited as required by KRS 218A.405 to 218A.460.

Section 16. KRS 218A.460 is amended to read as follows:

- (1) Jurisdiction in all forfeiture proceedings shall vest in the court where the conviction occurred regardless of the value of property subject to forfeiture.
- (2) Following conviction of a defendant for any violation of this chapter, the court shall conduct an ancillary hearing to forfeit property if requested by any party other than the defendant or Commonwealth. The Commonwealth's attorney, or county attorney if the proceeding is in District Court, shall initiate the hearing by filing a motion requesting entry of a final order of forfeiture upon proof that the property was being used in violation of the provisions of this chapter. The final order of forfeiture by the court shall perfect in the

Commonwealth or appropriate law enforcement agency, as provided in ***Section 13 of this Act***~~[KRS 218A.435]~~, right, title, and interest in and to the property. The Commonwealth may transfer any real property so forfeited by deed of general warranty.

- (3) If the property subject to forfeiture is of a type for which title or registration is required by law, or if the owner of the property is known in fact to the Commonwealth at the time of the hearing, or if the property is subject to a perfected security interest in accordance with the Uniform Commercial Code, KRS Chapter 355, the attorney representing the Commonwealth shall give notice of the ancillary hearing by registered mail, return receipt requested, to each person having such interest in the property, and shall publish notice of the forfeiture once each week for two (2) consecutive weeks in a newspaper of general circulation as defined in KRS Chapter 424 in the county where the forfeiture proceedings will occur. The notice shall be mailed and first published at least four (4) weeks prior to the ancillary hearing and shall describe the property; state the county, place, and date of seizure; state the name of the law enforcement agency holding the seized property; and state the name of the court in which the ancillary hearing will be held and the date of the hearing. However, the Commonwealth shall be obligated only to make a diligent search and inquiry as to the owner of subject property; and if, after diligent search and inquiry, the Commonwealth is unable to ascertain the owner, the actual notice requirements by mail shall not be applicable.
- (4) Unless otherwise expressly provided in KRS 218A.410, the burden shall be upon claimant to property to prove by preponderance of the evidence that it is not subject to forfeiture. Any claimant other than a person who holds title or registration to the property or who has a perfected security interest in the property shall be required to post a bond equivalent to ten percent (10%) of the appraised value of the property with the clerk of the court before being allowed to litigate the claim. The bond shall offset the costs of litigation incurred by the Commonwealth. A claimant may proceed in forma pauperis with leave of court upon sworn petition subject to the applicable rules and subject to the provisions of law concerning perjury.
- (5) The procedures for forfeiture proceedings as established in KRS 218A.405 to 218A.460 shall apply to any property subject to forfeiture which is pending as of July 13, 1990.

Section 17. The following KRS section is repealed:

218A.435 Asset forfeiture trust fund -- Management -- Distribution.

Approved April 5, 2007.

CHAPTER 125

(HB 389)

AN ACT relating to motor vehicle sales.

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

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

As used in KRS 190.010 to 190.990:

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

engaged in promoting the sale of new motor vehicles in this state of a particular brand or make to new motor vehicle dealers.

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

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

- (c) *Engages in the business of selling, installing, or servicing; offering to sell, install, or service; or soliciting or advertising the sale, installation, or servicing of equipment or modifications specifically designed to facilitate use or operation of a motor vehicle by a disabled or aging person.*
- (27) *"Adapted vehicle" means a new or used motor vehicle especially designed or modified for use by aging or disabled persons.*
- (28) *"Mobility equipment" means equipment specifically designed to facilitate the use of a motor vehicle by an aging or disabled person.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 190 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person, prior to engaging or continuing in the business of an automotive mobility dealer after the effective date of this Act, shall obtain an automotive mobility dealer license from the commission.*
- (2)
 - (a) *An automotive mobility dealer shall be licensed and regulated by the commission under the provisions of this chapter.*
 - (b) *The commission shall, by administrative regulations promulgated under KRS Chapter 13A, establish requirements for initial application for and renewal of a license to be an automotive mobility dealer. The commission's regulations establishing requirements for automotive mobility dealers shall include provisions for automotive mobility dealers to meet reasonable and appropriate quality assurance requirements. These requirements may include:*
 - 1. *Appropriate training by automotive mobility dealers regarding adapted vehicle usage;*
 - 2. *Driver evaluation by automotive mobility dealers; and*
 - 3. *A requirement that automotive mobility dealers obtain and maintain insurance in an amount to be established by the commission.*
 - The commission shall have the power to promulgate any other regulations that are necessary to implement this section.*
 - (c) *The commission shall immediately suspend the license of an automotive mobility dealer if it determines that the dealer has sold or modified a vehicle that does not comply with this section or any administrative regulations promulgated thereunder. A dealer whose license is suspended under this paragraph shall be permitted to appeal the suspension in accordance with KRS Chapter 13B.*
- (3) *A licensed automotive mobility dealer shall have the right to display, inventory, advertise, and offer for sale any adapted vehicle.*

Section 3. KRS 190.030 is amended to read as follows:

- (1) A motor vehicle dealer, new, used, or auction motor vehicle dealer, motor vehicle leasing dealer, restricted motor vehicle dealer, motorcycle dealer, broker, wholesaler, automotive recycling dealer, or a ~~salesperson[salesman]~~ of motor vehicles shall not engage in business in this state at any location without a license issued for that location as provided in KRS 190.010 to 190.080. If a person acts as a motor vehicle ~~salesperson[salesman]~~, he shall secure a motor vehicle ~~salesperson's[salesman's]~~ license in addition to a license for a motor vehicle dealer. The motor vehicle commission may provide by administrative regulation for other licensee activities and an appropriate fee.
- (2) A manufacturer of motor vehicles, factory branch, distributor, distributor branch, or wholesaler shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.
- (3) A factory representative or distributor representative shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.
- (4) Application for license shall be made to the licensor, at a time, in a form, and containing information the licensor shall require and shall be accompanied by the required fee. The licensor may require in the application, or otherwise, information relating to the applicant's solvency, his financial standing, or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business. The information may be considered by the licensor in determining the fitness of the applicant to engage in business as set forth in this section.

- (5) All licenses shall be granted or refused within thirty (30) days after submission of a complete application and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted. If a complaint of unfair cancellation of dealer franchise is in the process of being heard, a replacement application for the franchise shall not be considered until a decision is rendered by the commission.
- (6) The license fee for a calendar year, or part thereof, shall be as follows:
 - (a) For new motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof, plus one hundred dollars (\$100) for a supplemental license for each used car lot not immediately adjacent to the office or to a branch.
 - (b) For used motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof.
 - (c) For motor vehicle leasing dealers, one hundred dollars (\$100) for each office or branch or agent thereof.
 - (d) For restricted motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof.
 - (e) For motorcycle dealers, one hundred dollars (\$100) for each office, branch, or agent thereof.
 - (f) For motor vehicle manufacturers, one hundred dollars (\$100); and for each factory branch in this state, one hundred dollars (\$100).
 - (g) For distributors, motor vehicle auction dealers or wholesalers, the same as for dealers.
 - (h) For motor vehicle *salespersons, twenty dollars (\$20), to be paid by the licensed dealer for every salesperson the dealer employs*~~salesmen, ten dollars (\$10)}~~.
 - (i) For factory representatives, or distributor branch representatives, one hundred dollars (\$100).
 - (j) ***For automotive mobility dealers, one hundred dollars (\$100).***
- (7) The licenses of dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of the office or branch and shall be conspicuously displayed there. If the location is changed, the licensor shall endorse the change of location on the license. A licensee shall not be charged a fee for changing locations. A change of location shall require a new application. A licensee may conduct a temporary sale or display if the temporary sale or display is permitted under an enabling ordinance enacted by the city, county, urban-county, or consolidated local government within whose boundaries the temporary sale or display is to be conducted. A temporary sale or display shall be advertised as temporary in nature and shall consist of a representative sampling of the inventory of each participating licensee.
- (8) Every ~~salesperson[salesman]~~, factory representative, or distributor representative shall carry his license when engaged in business, and display it upon request. The license shall name his employer; and in case of a change of employer, the ~~salesperson[salesman]~~ shall immediately mail his license to the licensor who shall ~~endorse[renew]~~ the change on the license without charge.
- (9) If the licensor has reasonable cause to doubt the financial responsibility or the compliance by the applicant or licensee with the provisions of this statute, the licensor may require the applicant or licensee to furnish and maintain a bond in a form, amount and with sureties not less than fifteen thousand dollars (\$15,000), conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee. The bonds shall be executed in the name of the State of Kentucky for the benefit of any aggrieved parties, but the penalty of the bond shall not be invoked except after a court adjudication. The commission may promulgate administrative regulations to permit the applicant to submit evidence, in lieu of posting bond, that reliable financial arrangements, deposits, or commitments exist providing assurance, substantially equivalent to that afforded by a bond complying with this subsection, for payment on conditions and indemnity set forth in this subsection. The bonding requirements of this subsection shall not apply to manufacturers, factory branches, and their agents.
- (10) Application for dealer's license shall be submitted to the commission and contain information the commission may require. A motor vehicle dealer, unless licensed under KRS 190.010 to 190.080, shall not be permitted to register, receive, or use any motor vehicle registration plates.
- (11) Every motor vehicle dealer licensed in accordance with the provisions of this section shall make reports to the licensor at intervals and show information the licensor may require.

Approved April 5, 2007.

CHAPTER 126**(HB 185)**

AN ACT relating to health care, and making an appropriation therefor.

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

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

The General Assembly finds and declares that:

- (1) *Cardiovascular disease is the leading cause of death of Kentuckians and is the leading cause of death in every county in Kentucky;*
- (2) *Early identification and early treatment of cardiovascular disease is effective and can save lives;*
- (3) *An initiative on cardiovascular disease consisting of, but not limited to, research, outreach, prevention, early identification, education, and follow up for persons affected by cardiovascular disease is needed throughout the entire state; and*
- (4) *The involvement of the Department of Commercialization and Innovation and its centers, the Council on Postsecondary Education, and Kentucky's universities in a cardiovascular initiative provides excellent opportunities to utilize Kentucky's unique niche in cardiovascular disease to create new intellectual property, translational research, and new knowledge-based businesses.*

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

- (1) *The Kentucky Cardiovascular Disease Initiative (KCDI) is hereby created with the program goals that include, but are not limited to:*
 - (a) *Preventing and reducing the prevalence of cardiovascular disease in Kentucky through early detection and education;*
 - (b) *Reducing the incidence of deaths from cardiovascular disease in Kentucky;*
 - (c) *Measurably reducing health care costs associated with cardiovascular disease in Kentucky;*
 - (d) *Conducting research and developing new intellectual property and ancillary health businesses that create new knowledge-based businesses in Kentucky;*
 - (e) *Improving access to best practices and protocols for cardiovascular disease for all Kentuckians through an e-health network; and*
 - (f) *Assisting in securing state, federal, and private funding to stimulate health information capacities.*
- (2) *The KCDI shall be governed by a board that shall be appointed by the Secretary of the Cabinet for Health and Family Services, except as provided in paragraphs (q) through (s) of this subsection, no later than August 1, 2007, and composed of:*
 - (a) *One (1) member shall be appointed by the Secretary of the Cabinet for Health and Family Services who shall serve as chair of the KCDI during the first year, and this individual shall remain as a board member for two (2) additional years. The board shall elect its chair after the first year and may reelect the current chair;*
 - (b) *The president of the University of Louisville, or a designee;*
 - (c) *The president of the University of Kentucky, or a designee;*
 - (d) *The secretary or designee of the Cabinet for Health and Family Services;*
 - (e) *The commissioner or designee of the Department of Commercialization and Innovation;*
 - (f) *The commissioner or designee of the Department for Public Health;*
 - (g) *The executive director or designee of the Department of Insurance;*
 - (h) *The chair of the Kentucky e-Health Network Board, or a designee;*

- (i) *One (1) representative of a Kentucky comprehensive university and one (1) representative of the Kentucky Community and Technical College System;*
 - (j) *Two (2) physicians with experience in research and treatment of cardiovascular disease, one (1) recommended by the dean of the medical school at the University of Louisville and one (1) recommended by the dean of the medical school at the University of Kentucky;*
 - (k) *The executive director of the Kentucky Primary Care Association;*
 - (l) *The president of the Kentucky Academy of Family Physicians;*
 - (m) *One (1) member of a Kentucky chapter of the American Heart Association;*
 - (n) *Four (4) members representing the business community, from a list of eight (8) persons recommended by the Kentucky Chamber of Commerce;*
 - (o) *Four (4) members representing private sector hospitals that treat the greatest number of cardiology patients as measured by the number of MDC 5 discharges and as reported by COMPdata or its successor;*
 - (p) *One (1) representative from a freestanding pediatric teaching hospital;*
 - (q) *One (1) at-large member appointed by the Governor;*
 - (r) *Two (2) members of the Senate, one (1) representing each major political party, appointed by the President of the Senate; and*
 - (s) *Two (2) members of the House of Representatives, one (1) representing each major political party appointed by the Speaker of the House.*
- (3) (a) *Members serving under paragraphs (b) to (h), (k) and (l) of subsection (2) of this section shall serve by virtue of their positions and shall not be subject to term limits.*
 - (b) *Members appointed under paragraphs (i) and (j) of subsection (2) of this section shall serve three (3) year terms and may be reappointed to no more than two (2) consecutive terms. Members shall continue to serve until a successor is appointed.*
 - (c) *Members appointed under paragraphs (m) to (p) of subsection (2) of this section shall serve staggered terms that shall not exceed three (3) year terms. Members shall continue to serve until a successor is appointed.*
 - (d) *Members appointed under paragraph (q), (r), and (s) of subsection (2) of this section shall serve three (3) year terms.*
- (4) *The KCDI board shall meet at least quarterly or upon the call of the chair. All members may receive reimbursement for expenses related to attendance at meetings and official functions of the board in accordance with state administrative regulations relating to travel reimbursement, but shall not be otherwise compensated for duties associated with the board.*
 - (5) *The KCDI board may appoint committees, subcommittees, advisory councils or other groups to assist in the furtherance of the goals of the KCDI. Members appointed under this subsection need not be members of the KCDI board and may receive reimbursement for expenses related to attendance at meetings and official functions of the board in accordance with state administrative regulations relating to travel reimbursement, but shall not be otherwise compensated for duties associated with the board.*
 - (6) *No member of the board shall be subject to personal liability for a loss sustained or damage suffered as a result of board action or inaction.*
 - (7) *The KCDI board shall be attached to the Cabinet for Health and Family Services for administrative purposes.*

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

- (1) *The KCDI board shall establish goals and business plans for one (1), three (3), five (5), and ten (10) year time periods that include, but are not limited to, benchmark measures on:*
 - (a) *Outreach, including identification of Kentuckians who are at high risk for cardiovascular disease utilizing allied health programs in postsecondary institutions, the resources of community-based physicians, and local health departments;*

- (b) *Education on lifestyle modifications to prevent cardiovascular disease;*
 - (c) *Early identification, including identification of target populations for hypertension, cholesterol, diabetes, and other at-risk histories utilizing a statewide data repository;*
 - (d) *Education, including the development and implementation of educational curricula and public awareness materials that address different target populations, such as age groups, gender, and identified occupational groups, and include distinctions for rural and urban populations;*
 - (e) *Follow up strategies for identified at-risk Kentuckians, including disease management protocols utilizing a statewide data repository and the allied health programs in postsecondary institutions, the resources of community-based physicians, and local health departments;*
 - (f) *Improving access to health care for at-risk and identified patient population and improving access to best practices for health care providers, including utilization of an Internet-based e-health system;*
 - (g) *Basic, clinical, and translational research on cardiovascular disease and its treatment;*
 - (h) *Commercialization of intellectual property to create profitable new businesses, as well as the development of an Internet-based data repository and e-health program established at Kentucky Innovation and Commercialization Centers affiliated with regional and comprehensive universities, in accordance with KRS 154.12-300 to 154.12-315, on cardiovascular and other diseases that can be accessed by health care providers working with patients; and*
 - (i) *Patient privacy protection as required by federal and state law.*
- (2) *The board shall present business plans that include specific budget items developed pursuant to subsection (1) of this section to the Interim Joint Committee on Appropriations and Revenue and the Interim Joint Committee on Health and Welfare of the General Assembly prior to initial expenditure of any funds relating to implementation of the business plans, and shall provide updates annually or upon request of the General Assembly. The board shall make business plans available to any interested party upon request.*
- (3) *The board may create a public or nonprofit corporation to facilitate public-private collaboration in development and implementation of the KCDI:*
- (a) *A public or nonprofit organization may receive and expend funds appropriated by the General Assembly and may solicit, apply for, and receive any funds, grants, contracts, contributions, property, or services from any person, governmental agency, or other organization to carry out the responsibilities given to it by the KCDI Board;*
 - (b) *Funds appropriated to a public or nonprofit corporation shall not lapse at the end of a state fiscal year and shall be used solely for the purposes for which the funds were appropriated; and*
 - (c) *A public or nonprofit corporation created under this subsection shall:*
 - 1. *Follow standard accounting practices;*
 - 2. *Submit to an annual financial audit by an independent auditor;*
 - 3. *Submit a quarterly report of receipts and expenditures to the secretary of the Cabinet for Health and Family Services and the KCDI Board no later than sixty (60) days after the end of a quarter; and*
 - 4. *Submit an annual financial and progress report to the Governor, the secretary of the Finance and Administration Cabinet, and the Interim Joint Committees on Appropriations and Revenue and Health and Welfare by September 30 following the end of each state fiscal year. The annual report shall include a report of receipts and expenditures, the financial audit, and a report on the status and progress of the corporation's initiatives.*

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

- (1) *The Kentucky Cardiovascular Disease Initiative (KCDI) fund is created as a separate revolving fund. The KCDI fund shall consist of funds appropriated by the General Assembly and any other proceeds from grants, contributions, or other moneys made available for the purposes of the fund.*

- (2) *The KCDI fund amounts not expended at the close of a fiscal year shall not lapse, but shall be carried forward to the next fiscal year.*
- (3) *Any interest earnings of the KCDI fund shall become a part of the fund and shall not lapse.*
- (4) *KCDI fund moneys shall be used to support the Kentucky Cardiovascular Disease Initiative established under Section 2 of this Act. Funds shall be expended in accordance with Sections 1 to 4 of this Act, distributed as directed by the board established by Section 2 of this Act.*
- (5) *The Cabinet for Health and Family Services may expend available funds on the KCDI.*

Section 5. KRS 216.267 is amended to read as follows:

- (1) The duties and responsibilities of the board shall be to implement and oversee the operation of an electronic health network in this Commonwealth, to be known as the Ke-HN.
- (2) The board shall:
 - (a) Exercise all of the administrative functions of the board;
 - (b) Appoint an advisory group that shall meet at least quarterly for the purpose of collaborating with health-care providers and payors, computer technology companies, telecommunication companies, and other affected entities to ensure input into the implementation of the Ke-HN;
 - (c) Review models for an electronic health network;
 - (d) Oversee the development of comparative business cases for the models reviewed and choose a model to be implemented in this Commonwealth. In selecting a model for implementation, the board shall consider the following elements:
 - 1. Various models and configurations for Ke-HN, either as developed from the board's research or as recommended by public and private experts. Each model or configuration shall be capable of supporting administrative and clinical functions listed in subsection (4) of this section, including the capability to integrate with an electronic Medicaid management information system, provide immediate health alerts to health-care providers across the state, support health-care provider education related to the identification and treatment of rare and unusual diseases, serve as a registry of the existence and location of advance directives related to health care or mental health treatment, and serve as a registry of organ donations. The model chosen may be implemented in phases, as determined by the board;
 - 2. Projected costs of the network, indicating those which would be allocated to state government, health-care providers, insurers, or others;
 - 3. Options for financing the start-up, administrative, and maintenance costs, projected returns on investments, a timetable for realizing those returns, and any proposed subscription or transaction fees associated with the Ke-HN;
 - 4. Procedures intended to secure protected health information in accordance with HIPAA;
 - 5. Timetables for implementation of the Ke-HN, whether as a fully established network, in phases, or through the use of a pilot project or regional approach to the Ke-HN;
 - 6. Suggested incentives to promote the use of Ke-HN by health care providers and payors, and the Medicaid program; and
 - 7. Incentives, including but not limited to tax credits, low-interest loans, and grants, under Subchapters 22, 23, 24, 26, and 28 of KRS Chapter 154 for a company that develops or manufactures software necessary for the development of the Ke-HN, if the company meets all the eligibility requirements under the respective subchapter in KRS Chapter 154;
 - (e) Receive comments from the advisory group created in paragraph (b) of this subsection;
 - (f) Submit a description of the model chosen for implementation to the Legislative Research Commission for the opportunity for any comments;
 - (g) If state funds are required for implementation of the model chosen, seek funding through the appropriations process;

- (h) Oversee the implementation of the model chosen subject to the appropriation of funds. Oversight shall include the following:
 - 1. Developing any central interchange, including any central server and software;
 - 2. Developing the Ke-HN of providers and payors who participate in the network, which shall be on a voluntary basis;
 - 3. Making recommendations regarding the features and functions which shall be included in the distributed components of the network; and
 - 4. Performing an outcomes assessment of the benefits achieved by the network;
- (i) Identify and adopt standards for all computer systems communicating with the Ke-HN, including but not limited to:
 - 1. The HIPAA standards for electronic transactions as the federal regulations become final, or more stringent standards for content and networking as determined by the board;
 - 2. Medical lexicon for administrative billing and clinical purposes;
 - 3. Procedure and billing codes; and
 - 4. Prevalent health care industry standards for software and networking that ensure that applications work on all types of computer systems and equipment;
- (j) Establish procedures to ensure that Ke-HN transactions are in compliance with HIPAA guidelines;
- (k) Facilitate the implementation of the federal HIPAA guidelines, and identify any additional variables specific to Kentucky that are required to be in transactions within the HIPAA guidelines;
- (l) Oversee the operations of the Ke-HN, including but not limited to making recommendations for financing the central interchange for the network and making recommendations to organizations about implementing the network in their respective organizations;
- (m) Oversee the development of the central interchange that supports communication between components of the Medicaid management information system;
- (n) Implement educational efforts about the Ke-HN;
- (o) Develop incentives for providers and payors to use the Ke-HN;
- (p) Identify options for, adopt, and implement approaches to various aspects of the Ke-HN necessary for its creation and operation, including but not limited to technology architecture, governance and oversight, development and implementation plans, and other areas identified by the board relating to its charge;
- (q) Facilitate the development of private and public partnerships to build the Ke-HN;
- (r) Assign priority in phasing in the network to geographical locations that are critical to homeland security and protection of the Commonwealth's energy production;
- (s) Collaborate with federal agencies in the development and implementation of the Ke-HN as a demonstration model for the nation;
- (t) Collaborate with the Kentucky Health Care Infrastructure Authority created under KRS 216.261;
- (u) Assist with the securing of state, federal, or private funding for the Kentucky Health Care Infrastructure Authority created under KRS 216.261;
- (v) Stimulate the development of state and local population health information capacities;
- (w) Promulgate administrative regulations in accordance with KRS Chapter 13A necessary to carry out the responsibilities of the board;
- (x) Receive and dispense funds appropriated for its use by the General Assembly or may solicit, apply for, and receive any funds, property, or services from any person, governmental agency, or organization to carry out its statutory responsibilities;

- (y) Report to the Governor, secretary of the Cabinet for Health and Family Services, commissioner of the Department of Commercialization and Innovation, Legislative Research Commission, Interim Joint Committee on Health and Welfare, and Interim Joint Committee on Banking and Insurance annually on the development of the Ke-HN and the impact on quality and cost of health care; and
 - (z) Collaborate with the Telehealth Board to link functions of the telehealth network to the Ke-HN, as determined by the Telehealth Board.
- (3) The board may:
- (a) Use any software program or expand any Medicaid management information system or electronic provider and payor network developed by the Medicaid program to support electronic health transactions between payors, insurers, health-care providers, and patients that are not Medicaid-related, unless prohibited by federal law or regulation;
 - (b) Contract, in accordance with KRS Chapter 45A, with an independent third party ***or a public or nonprofit e-Health corporation*** for any service necessary to carry out the responsibilities of the board subject to the appropriation of funds;
 - (c) Award grants to health-care providers and payors to implement projects related to health informatics, with highest priority given to health-care providers and payors that serve rural and inner-city areas of this Commonwealth;~~and~~
 - (d) Enter into an agreement with the University of Kentucky or the University of Louisville to develop comparative business models or implement any phase of the Ke-HN, using private or federal funds received by the university for the purpose designated in the agreement; ***and***
 - (e) ***Create a public or nonprofit e-Health corporation to facilitate public-private collaboration in development and implementation of the Ke-HN:***
 - 1. ***A public or nonprofit e-Health organization may receive and expend funds appropriated by the General Assembly and may solicit, apply for, and receive any funds, grants, contracts, contributions, property, or services from any person, governmental agency, or other organization to carry out the responsibilities given to it by the Ke-HN Board;***
 - 2. ***Funds appropriated to a public or nonprofit e-Health corporation shall not lapse at the end of a state fiscal year and shall be used solely for the purposes for which the funds were appropriated; and***
 - 3. ***A public or nonprofit e-Health corporation created under this paragraph shall:***
 - a. ***Follow standard accounting practices;***
 - b. ***Submit to an annual financial audit by an independent auditor;***
 - c. ***Submit a quarterly report of receipts and expenditures to the secretary of the Cabinet for Health and Family Services and the Ke-HN Board no later than sixty (60) days after the end of a quarter; and***
 - d. ***Submit an annual financial and progress report to the Governor, the secretary of the Finance and Administration Cabinet, and the Interim Joint Committees on Appropriations and Revenue and Health and Welfare by September 30 following the end of each state fiscal year. The annual report shall include a report of receipts and expenditures, the financial audit, and a report on the status and progress of the corporation's initiatives.***
 - (f) ***Promulgate administrative regulations in accordance with KRS Chapter 13A to implement the provisions of paragraph (e) of this subsection.***
- (4) In its fully implemented form, the Kentucky e-Health Network is envisioned to support or encourage the following types of electronic transactions or activities that would be phased in over time:
- (a) Automatic drug-drug interaction and allergy alerts;
 - (b) Automatic preventive medicine alerts;
 - (c) Electronic access to the results of laboratory, X-ray, or other diagnostic examinations;

- (d) Disease management;
- (e) Disease surveillance and reporting;
- (f) Educational offerings for health-care providers;
- (g) Health alert system and other applications related to homeland security;
- (h) Links to drug formularies and cost information;
- (i) Links to evidence-based medical practice;
- (j) Links to patient educational materials;
- (k) Medical record information transfer to other providers with the patient's consent;
- (l) Physician order entry;
- (m) Prescription drug tracking;
- (n) Registries for vital statistics, cancer, case management, immunizations, and other public health registries;
- (o) Registry of the existence and location of advance directives related to health care and mental health treatment;
- (p) Registry of organ donations executed under KRS 311.165 to 311.235;
- (q) Secured electronic consultations between providers and patients;
- (r) A single-source insurance credentialing system for health care providers; and
- (s) The following transactions covered by HIPAA:
 - 1. Electronic health-care claims submission;
 - 2. Electronic payment;
 - 3. Coordination of benefits;
 - 4. Health-care claim status;
 - 5. Enrollment and disenrollment in a health plan;
 - 6. Eligibility for a health plan;
 - 7. Health plan premium payments;
 - 8. Referral certification and authorization;
 - 9. First report of injury; and
 - 10. Health claims attachments.

Section 6. There is included in the appropriation for the Cabinet for Health and Family Services for state fiscal year 2007-2008 federal grant funds from the Centers for Medicare and Medicaid Services \$4,987,583 for the Kentucky Health Information Partnership program in the Department for Medicaid Services.

Approved April 5, 2007.

CHAPTER 127

(SJR 109)

A JOINT RESOLUTION directing the Environmental and Public Protection Cabinet to develop a drought mitigation and response plan for the Commonwealth, pursuant to KRS Chapter 151.

WHEREAS, KRS Chapter 151 requires the Commonwealth to protect the rights of all persons who are equitably and reasonably interested in the use and availability of water; and to provide for the adequate disposition of water among the people of the Commonwealth entitled to its use during severe drought or times of emergency; and

WHEREAS, drought is a natural recurring feature of the climate of the Commonwealth, with no reliable method to predict its onset, intensity, or duration; and

WHEREAS, as demands on water supplies continue to grow, droughts of a magnitude that do not presently cause impacts may become significant in the future; thereby increasing the frequency of water-shortage conditions; and

WHEREAS, during times of water shortage, a limited quantity of water must be shared among potable, industrial, agricultural, commercial, environmental, and recreational demands; and

WHEREAS, the Environmental and Public Protection Cabinet's water shortage response plan that was developed in response to the original statute is nineteen years old, is based on local water supply assessments and water-shortage response strategies, and does not address water shortages that affect self-supplied domestic uses, livestock watering demands, and other similar situations; and

WHEREAS, there exists no comprehensive drought mitigation and response strategy that coordinates the actions of the Commonwealth in preparing for and responding to drought; and

WHEREAS, it is necessary for the Commonwealth to develop a comprehensive and systematic process of long-range management and orderly development of the Commonwealth's water resources and to plan for drought emergencies; and

WHEREAS, the Environmental and Public Protection Cabinet is granted the authority pursuant to KRS 151.200 in times of drought emergency or other similar situations to balance the rights and availability of water among water users;

NOW, THEREFORE,

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

Section 1. The Environmental and Public Protection Cabinet shall develop, in consultation with a Drought Mitigation and Response Advisory Council, a drought mitigation and response plan to provide for drought mitigation and emergency planning.

Section 2. The secretary of the Environmental and Public Protection Cabinet shall appoint members to the Drought Mitigation and Response Advisory Council. This council shall include the Kentucky Division of Emergency Management, and representatives of state and federal agencies that regulate or otherwise have a role in water supply, water resources management, and drought response. The advisory council shall also include representatives of various water-dependent sectors, including city and county governments, the agricultural community, the electrical power generators for the Commonwealth of Kentucky, industrial users, commercial users, and municipal and private water utilities. The advisory council may also include representatives of citizen groups, environmental groups, recreational groups, developers, the academic community, and other interested parties as the secretary deems appropriate.

Section 3. The Environmental and Public Protection Cabinet shall schedule regular meetings with the Drought Mitigation and Response Advisory Council and work with the council in developing a statewide drought mitigation and response plan.

Section 4. The statewide mitigation and response plan shall be consistent with KRS Chapter 151.

Section 5. The Environmental and Public Protection Cabinet shall submit the statewide drought mitigation and response plan to the Legislative Research Commission and to the Interim Joint Committee on Agriculture and Natural Resources by December 31, 2008.

Approved April 5, 2007.

CHAPTER 128

(HB 191)

AN ACT relating to crimes and punishments.

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

Section 1. KRS 439.3405 is amended to read as follows:

- (1) Notwithstanding any statute eliminating parole or establishing minimum time for parole eligibility for a certain class or status of offender, including KRS 439.340~~(11)~~~~(10)~~, 439.3401, 532.080(7), and 533.060, the board, with the written consent of a majority of the full board, may review the case of any prisoner and release that prisoner on parole despite any elimination of or minimum time for parole eligibility, when the prisoner has a documented terminal medical condition likely to result in death within one (1) year or severe chronic lung disease, end-stage heart disease, severe neuro-muscular disease such as multiple sclerosis; or has severely limited mobility due to paralysis as a result of stroke or trauma; or is dependent on external life support systems and would not pose a threat to society if paroled.
- (2) Medical information considered under this section shall be limited to the medical findings supplied by Department of Corrections medical staff. The medical staff shall provide in writing the prisoner's diagnosis and prognosis in support of the conclusion that the prisoner suffers from a terminal medical condition likely to result in death within one (1) year or because of the conditions set forth in subsection (1) of this section he is totally dependent on others for the activities of daily living.
- (3) The medical information prepared by the Department of Corrections medical staff under this section shall be forwarded to the warden of the institution who shall submit that information and a recommendation for or against parole review under this section to the commissioner of the Department of Corrections or his designee. With the approval of the commissioner of the Department of Corrections, a request for parole review under this section, along with the medical information and warden's recommendation, shall be submitted to the board.
- (4) Medical information presented under this section shall be considered along with other information relevant to a decision regarding the granting of parole and shall not constitute the only reason for granting parole.
- (5) *Notwithstanding KRS 439.340(5), in addition to or in conjunction with each review conducted under subsection (1) of this section for any prisoner convicted of a Class A, B, or C felony and prior to the granting of parole to any such prisoner, the Parole Board shall conduct a hearing of which the following persons shall receive not less than fifteen (15) nor more than thirty (30) days' notice:*
 - (a) *The Commonwealth's attorney, who shall notify the sheriff of every county and the chief of police of every city and county in which the prisoner committed any Class A, B, or C felony for which he is imprisoned; and*
 - (b) *All identified victims of the crimes or the next of kin of any victim who is deceased.*

Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt at the Commonwealth Attorney's business office. Notices received by chiefs of police and sheriffs shall be posted in a conspicuous location where police employed by the department may see it. Notices shall be posted in a manner and at a time that will allow officers to make comment thereon to the Parole Board. Notice to victims or their next of kin shall be made by mail, fax, or electronic means at the discretion of the board, to their last known address or telephone number as provided by the Commonwealth's attorney to the Parole Board at the time of incarceration of the prisoner. Notice to the victim or the next of kin of subsequent considerations for parole after the initial consideration shall not be sent if the victim or the next of kin gives notice to the board that he or she no longer wants to receive such notices. The notice shall include the time, date, and place of the hearing provided for in this subsection, and the name and address of a person to write if the recipient of the notice desires to attend the hearing or to submit written comments.

SECTION 2. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

- (1) *When a prisoner in a jail, regional jail, or holdover is injured, is or becomes sick or ill, or requires specialized medical care or long-term medical care which is not available at the local jail, the jailer or other person in charge of the jail, regional jail, or holdover may request that the commissioner of the department, or the commissioner's designee in writing, transfer the prisoner to a facility operated by the department or under contract to the department for the provision of necessary medical treatment and care.*
- (2) *The commissioner, or the commissioner's designee in writing, may authorize the transfer of the prisoner to a facility operated by the department or under contract to the department for the length of time necessary to secure medical treatment and care for the prisoner. Following medical care and treatment the prisoner shall be returned to the jail, regional jail, or holdover.*

- (3) *If the commissioner, or the commissioner's designee in writing, authorizes the transfer of the prisoner to a facility operated by the department or under contract to the department, then the department shall pay:*
- (a) *The costs of transfer to and from the department's facilities;*
 - (b) *The room, board, and related costs for the prisoner while the prisoner is in the custody of the department; and*
 - (c) *The costs for medical care, treatment, medicines, and supplies for the prisoner while the prisoner is in the custody of the department.*
- (4) *The department shall have no legal duty to transfer any prisoner to the department for medical treatment and care. The decision of the commissioner or the commissioner's designee in writing whether or not to accept a prisoner for transfer to the department shall be subject to appeal to the Secretary of Justice.*
- (5) *The department shall promulgate administrative regulations relating to the transfer of prisoners to the department for medical treatment and care.*
- (6) *When a prisoner is transferred to the department for medical care and treatment, the jailer or other person in charge of the jail, regional jail, or holdover shall notify the following persons of the reason for the transfer, the fact of the transfer, and the general reasons for the transfer:*
- (a) *The prisoner's next of kin;*
 - (b) *The prisoner's attorney of record;*
 - (c) *The Commonwealth's attorney or county attorney, as appropriate; and*
 - (d) *The chief Circuit Judge or chief District Judge, as appropriate.*
- (7) *When a prisoner is returned to the jail, regional jail, or holdover by the department, the jailer or other person in charge of the jail, regional jail, or holdover shall notify the persons specified in subsection (6) of this section of the prisoner's return.*
- (8) *The department's costs of providing care, drugs, medications, travel, and all other expenses authorized by this section shall be a necessary governmental expense.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

- (1) *When a unit of local government, or regional jail authority facilitates medical care for a prisoner confined in the jail, holdover, or regional jail who has not been convicted as a felon and who holds a policy, contract, or certificate of insurance coverage in any form, the insurer shall be primary for payment of medically necessary health care benefit claims provided the following conditions are met:*
- (a) *The reimbursement shall be for medical, dental, or psychological claims that are covered benefits under the terms and conditions of the health benefit plan held by the prisoner;*
 - (b) *The reimbursement shall be applied under the terms and conditions of the health benefit plan and in the same manner as though the insured were not a prisoner; and*
 - (c) *All premiums for the health benefit plan are current.*
- (2) *If the unit of local government, combination of units of local government, or regional jail authority has contracted with the Department of Corrections under the Department of Corrections' contract for medical, dental, or psychological care access, or drugs, medicines, or pharmaceutical services, then the rights of the local government, combination of local governments, or regional jail authority shall be subrogated to the contract provider of such services to the Department of Corrections.*
- (3) *If the unit of local government, combination of units of local government, or regional jail authority has, with the approval of the Department of Corrections, contracted with another pharmaceutical services provider, then the rights of the local government, combination of local governments, or regional jail authority shall be subrogated to the contract provider of medical, dental, or psychological care to the local jail, for access to drugs, medicines, or pharmaceutical services to the unit of local government, combination of units of local government, or regional jail authority.*
- (4) *If a prisoner has been transferred from a local jail, regional jail, or holdover to the Department of Corrections for medical care pursuant to Section 2 of this Act, then the contract provider of drugs and*

pharmaceutical services or the contract provider of medical, dental, or psychological care shall be subrogated to the provider of such services to the Department of Corrections.

SECTION 4. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (2) of this section, each jail, regional jail, holdover, or other correctional facility owned or operated by a unit of local government, combination of units of local government, or regional jail authority shall utilize the Department of Corrections' contract pharmacy plan.*
- (2) *The Department of Corrections may, on a yearly basis, waive the requirement of subsection (1) of this section if the unit of local government, combination of units of local government, or regional jail authority proves to the Department of Corrections that the unit of local government, combination of units of local government or regional jail authority has contracted with another vendor and that:*
 - (a) *The prescription plan covers pharmacy services, drugs, and medicine in a manner which is equal to or superior to the Department of Corrections contract pharmacy plan; and*
 - (b) *The cost of the prescription plan is less in cost than the Department of Corrections contract pharmacy plan.*
- (3) *Except as provided in subsection (4) of this section, each jail, regional jail, holdover, or other correctional facility owned or operated by a unit of local government, combination of units of local government, or regional jail authority shall utilize the Department of Corrections' contract medical, dental, and psychological care access plan and the administrative service fee for the plan shall be paid by the Department of Corrections subject to the limits of Section 5 of this Act.*
- (4) *The Department of Corrections may, on a yearly basis, waive the requirement of subsection (3) of this section if the unit of local government, combination of units of local government, or regional jail authority proves to the Department of Corrections that the unit of local government, combination of units of local government, or regional jail authority has contracted with another vendor and that:*
 - (a) *The medical, dental, and psychological care access plan provides services and access which is equal to or superior to the Department of Corrections contract medical, dental, and psychological care access plan; and*
 - (b) *The cost of the medical, dental, and psychological care access plan is less in cost than the Department of Corrections contract medical, dental, and psychological care access plan.*
- (5) *A unit of local government, combination of units of local government, or regional jail authority may appeal a decision of the Department of Corrections denying a waiver under subsection (2) or (4) of this section to the Secretary of Justice.*

Section 5. (1) The Secretary of the Justice Cabinet shall have the authority to declare a state of extraordinary circumstances upon a finding that the appropriations to the Department of Corrections for the provision of medical care of prisoners in county jails pursuant to Sections 2,3, and 4 of this Act, for the provision of drugs, medications, and similar items for prisoners in county jails pursuant to Sections 2, 3, and 4 of this Act and KRS 441.045, and for the medical care of county jail prisoners who are transferred to the Department of Corrections pursuant to Section 2 of this Act, are insufficient to pay the expenses authorized by either section. Upon certification and notwithstanding 2006 Ky. Acts Chapter 252, Part III, General Provisions, 5. Appropriations Expenditure Purpose and Transfer Restrictions, the secretary shall be authorized to transfer general fund moneys, restricted funds, or federal funds, with the approval of the State Budget Director, to the extent funds are available and not otherwise obligated to carry out the provisions of KRS Chapters 196, 197, and 441 in the 2006-2008 fiscal biennium from other budget units within the cabinet to the Department of Corrections to address the immediate needs of a program authorized by Section 2, 3, or 4 and KRS 441.045 of this Act. The transfer of any funds pursuant to this section shall be subject to the provisions and notification requirements of KRS 48.630. Moneys transferred pursuant to this paragraph shall be placed in a trust and agency account to be used for the purpose set forth in this paragraph.

(2) If, after transferring funds within the cabinet, the secretary finds that extraordinary needs relating to medical care of county jail prisoners still exist, the secretary may then request approval from the Governor for any amount of expenditures not covered by funds transferred from other agencies within the cabinet, not to exceed \$1,500,000, for catastrophic, medical care, and medical care pursuant to Section 2 of this Act and KRS 441.045 to request that expenditures be deemed a necessary governmental expense. Upon approval by the Governor, funds not to exceed \$1,500,000 shall be transferred from the General Fund Surplus (KRS 48.700) or the Budget Reserve Trust

Fund Account (KRS 84.705). These funds shall be transferred only upon certification of need by the Secretary of the Justice Cabinet to the Secretary of the Finance and Administration Cabinet and upon approval by the Governor. Moneys appropriated pursuant to this paragraph shall be placed in a trust and agency account to be used for the purpose set forth in this paragraph.

(3) If, after transferring funds within the cabinet, the secretary finds that extraordinary needs relating to medical care of county jail prisoners relating to the Department of Corrections medical, dental, and psychological care access plan pursuant to Section 4 of this Act still exist, the secretary may then request approval from the Governor for any amount of expenditures not covered by funds transferred from other agencies within the cabinet, not to exceed \$1,000,000, and to request that expenditures be deemed a necessary governmental expense. Upon approval by the Governor, funds not to exceed \$1,000,000 shall be transferred from the General Fund Surplus (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 84.705). These funds shall be transferred only upon certification of need by the Secretary of the Justice Cabinet to the Secretary of the Finance and Administration Cabinet and upon approval by the Governor. Moneys appropriated pursuant to this paragraph shall be placed in a trust and agency account to be used for the purpose set forth in this paragraph.

(4) The cabinet shall submit monthly updates to the Interim Joint Committees on Appropriations and Revenue and Judiciary on expenditures made pursuant to these paragraphs.

Approved April 5, 2007.

CHAPTER 129

(SJR 93)

A JOINT RESOLUTION honoring distinguished Kentuckians for their service to the Commonwealth.

WHEREAS, from time to time, the General Assembly has seen fit to honor various Kentuckians by naming portions of state highways in their honor; and

WHEREAS, these Kentuckians have come from all walks of life, held a multitude of jobs, and had a variety of reasons that they were deserving of the honor; and

WHEREAS, these individuals have included former Governors, decorated veterans, slain law enforcement officers, local elected officials, astronauts, doctors, educators, distinguished athletes, and civic leaders; and

WHEREAS, the General Assembly has often honored the veterans of this state by naming portions of several roads, from interstates to small two-lane country roads, in their honor; and

WHEREAS, the General Assembly again sees fit to honor a group of individuals who have made the lives of their fellow Kentuckians better and brought honor and respect to the Commonwealth;

NOW, THEREFORE,

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

Section 1. The Transportation Cabinet shall honor the memory of Bennett Shortridge by naming the old bridge on Kentucky Route 80/U.S. Highway 460 in the town of Millard, in Pike County, the "Bennett Shortridge Memorial Bridge." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at the locations specified in this section that read "Bennett Shortridge Memorial Bridge."

Section 2. The Transportation Cabinet shall honor Jesse R. Green at the entrance to Marshall County Technical Center on U.S. Highway 641 and in front of Marshall County Technical Center on U.S. Highway 68 in Marshall County with signs that read, "Home of Jesse R. Green SkillsUSA Kentucky State Welding Champion." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at the locations specified in this section that read "Home of Jesse R. Green SkillsUSA Kentucky State Welding Champion."

Section 3. The Transportation Cabinet shall name "Thoroughbred Run," the Paris By-Pass in the City of Paris, from its intersection with U.S. 27-68 North and East to its intersection with U.S. 68 "Martin Luther King, Jr. Boulevard." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at each end of the route specified in this section that read "Martin Luther King, Jr. Boulevard."

Section 4. The Transportation Cabinet shall honor 2006 National League Cy Young award winner Brandon Webb by naming U.S. Highway 60 from the Ashland City limit to Beech Street in the city of Ashland, the "Brandon

Webb Highway." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at each end of the route specified in this section that read "Brandon Webb Highway."

Section 5. The Transportation Cabinet shall honor former state representative John W.D. Bowling by naming the Danville/U.S. 127 Bypass from Harrodsburg Road to Stanford Road in the city of Danville the "John W.D. Bowling Bypass." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution erect signs at the location specified in this section and at intervals in between that read "John W.D. Bowling Bypass."

Section 6. The Transportation Cabinet shall honor the memory of Private First Class Ottis Reed by naming the bridge on the new U.S. Highway 119 currently under construction in the town of Meta, with signs at each end of the bridge that read, "Private Ottis Reed Memorial Bridge." The Transportation Cabinet shall, within 30 days of completion and opening of the bridge, erect signs at the locations specified in this section that read "Private Ottis Reed Memorial Bridge."

Section 7. The Transportation Cabinet shall honor the Colonel Larry Fuller Band at the Kentucky Route 194 exits off of U.S. Highway 119 in Pike County with signs that read, "Colonel Larry Fuller Band." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at each exit specified in this section that read "Colonel Larry Fuller Band."

Section 8. The Transportation Cabinet shall designate Interstate 75 within Fayette County as the "Tuskegee Airmen Trail," and shall, within 30 days of the effective date of this Resolution, erect signs at each end of Interstate 75 in Fayette County and at intervals in between that read "Tuskegee Airmen Trail."

Section 9. The Transportation Cabinet is directed to name Interstate 65, from the Jefferson/Bullitt County line to the Kentucky/Tennessee state line, the "Abraham Lincoln Memorial Expressway," and name the entire length of U.S. 31E, the "Lincoln Heritage Highway." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs on Interstate 65 at the Jefferson/Bullitt County line and the Kentucky/Tennessee state line, and at intervals in between, that read "Abraham Lincoln Memorial Expressway" and at each end of U.S. 31E, and at intervals in between, that read "Lincoln Heritage Highway."

Section 10. The Transportation Cabinet is directed to honor and salute the military history of Skaggs brothers Carl, Escom, Hurl, Hunter, and Wilbur by naming Kentucky Route 172 in Morgan County, from the town of Crockett to the Johnson County line, the "Skaggs Brothers Highway." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at the locations specified in this section that read "Skaggs Brothers Highway."

Section 11. The Transportation Cabinet shall honor the memory of Billy Ray Patton, whose life was taken in action during the Korean War, by naming the bridge located on U.S. Highway 23 in Lawrence County, near the Lawrence County/Boyd County line, the "Billy Ray Patton Memorial Bridge." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at both ends of the bridge specified in this section that read "Billy Ray Patton Memorial Bridge."

Section 12. The Transportation Cabinet shall honor musician Don Parmley at the Clinton County/Wayne County line and the Pulaski County/Wayne County line on Kentucky Route 90 entering into Wayne County with signs that read, "Welcome to Wayne County, Home of Don Parmley, Founding Member of the Bluegrass Cardinals." The Transportation Cabinet shall within 30 days of the effective date of this Resolution, erect signs at the locations specified that read "Welcome to Wayne County, Home of Don Parmley, Founding Member of the Bluegrass Cardinals."

Section 13. The Transportation Cabinet shall honor Harlan County coal miners by naming Kentucky Route 38 in Harlan County, from the Kentucky/Virginia state line to the Ages city limit, the "Harlan County Coal Miners Highway." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at the locations specified in this section that read "Harlan County Coal Miners Highway."

Approved April 5, 2007.

CHAPTER 130**(HB 282)**

AN ACT relating to continuing care retirement communities.

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

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

The establishment of continuing care retirement community nursing home beds under KRS 216B.015, 216B.020, 216B.330, and 216B.332 shall be limited to the time period commencing upon July 14, 2000, and ending **December 31, 2012**~~July 31, 2008~~. After **December 31, 2012**~~July 31, 2008~~, no further continuing care retirement community nursing home beds shall be established under KRS 216B.015, 216B.020, 216B.330, and 216B.332 without affirmative actions of the General Assembly.

Approved April 5, 2007.

CHAPTER 131**(SB 100)**

AN ACT relating to police in consolidated local governments.

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

Section 1. KRS 67C.319 is amended to read as follows:

- (1) Every consolidated local government police force merit system board created shall make, promulgate, and when necessary, amend rules for the qualifications, original appointment, probation, promotion, demotion, transfer, lay-off, reinstatement, suspension, and removal of the officers covered by KRS 67C.303, 67C.305, 67C.307, and 67C.309. No rule or regulation made, promulgated, or amended by any consolidated local government police force merit system board shall be inconsistent with the express provisions of this chapter. The board shall publish its rules and any amendments and shall supply certified copies to the mayor, legislative council, and the police chief and shall post a copy conspicuously in the office or place where the headquarters of the consolidated local government police is maintained. The copies of the rules and amendments shall be distributed and posted in the manner prescribed within three (3) days after adoption.
- (2) The rules in addition to other matters shall specifically provide for and cover the following:
 - (a) Physical, mental, educational, citizenship, and age requirements for new officers;
 - (b) Physical, mental, educational, citizenship, age, and length of service requirements for promotion from lower to higher rank or classification;
 - (c) A requirement that police officers have five (5) years of service as police officers before being eligible for promotion to the rank of sergeant;
 - (d) Provision for open, competitive, written, oral, and other mental and physical examinations to determine the relative fitness of all candidates for original appointment and for promotion;
 - (e) A requirement of public notice of all examinations to be given by the merit board;
 - (f) Organization and meetings of the board; and
 - (g) Procedure and conduct of public hearings.
- (3) The board, with the approval of the mayor, shall employ a chief examiner who shall be professionally qualified and experienced in the field of testing and who shall formulate, give, grade, and administer all written or other examinations as required by the board.
- (4) Physical fitness for promotion shall be presumed unless certified to the contrary by the chief of police who shall supply the board with medical records of the disability.
- (5) At least ninety (90) days' notice shall be given before a promotional examination is conducted.

- (6) Promotional tests shall be graded, as determined by the board, to include written, oral, and other examination scores. In addition, seniority~~[-in-grade]~~, not to exceed ten percent (10%) ***of a candidate's final evaluated rating***, shall be awarded for each year of service~~[-after five (5) full years of service]~~. The results of the written, oral and other examinations shall be combined with seniority to determine the applicant's final evaluated ratings. ***If the number of candidates exceeds the number of positions in the rank for which the candidates are being tested, the chief examiner may set a cut-off score on any of the tests, excluding seniority, that candidates must meet or exceed in order for them to progress in the selection process. The cut-off score shall be set such that the number of candidates equals one-half (1/2) the number of positions in the rank for which the candidates are being tested, that number to be rounded up, at the time of the posting. If ties exist at the cut-off score, individuals having tied scores shall progress in the selection process***~~[-rating]~~.
- (7) Promotional eligibility lists shall contain the names of successful candidates in the order of their standing through examination. An individual's results and ratings are subject to review by the individual candidate but are otherwise confidential.
- (8) The chief examiner shall compile the results of all examinations. Upon completion of grading of examinations, candidates shall be informed by mail of the final evaluated rating attained and their individual ranking on the eligibility list. An applicant may, by appointment, discuss his or her examination results within the offices of the chief examiner during business hours at any time when such review will not interfere with the work of the board. Such review must be requested within ten (10) calendar days following the establishment of the eligibility list. The board shall make examination questions and answers available for inspection by the applicant upon the filing of a written challenge.
- (9) In filling promotional vacancies, the chief of police shall select from not more than five (5) candidates graded highest on the appropriate eligibility list. The board shall determine the justification for not promoting a candidate with the higher evaluated rating who has been certified for promotion four (4) times. If the board determines that the candidate's nonpromotion is unjustified or unsupported by the evidence, the candidate shall be promoted. The certified rank list for promotions shall be valid for two (2) years and shall not be extended. All promotional vacancies shall be filled within sixty (60) days of the vacancy.

Approved April 5, 2007.

CHAPTER 132

(SB 145)

AN ACT relating to oaths.

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

Section 1. KRS 62.040 is amended to read as follows:

- (1) Every peace officer shall take an oath that he will endeavor, to the best of his ability, to detect and prosecute all gamblers and others violating the laws against gaming.
- (2) ***The oath specified in subsection (1) of this section may be administered by any person who may administer an oath pursuant to KRS 62.020. A person shall not administer the oath specified in subsection (1) of this section to himself or herself.***

Section 2. KRS 70.010 is amended to read as follows:

- (1) In addition to the oath prescribed in the Constitution, every sheriff shall take the following oath~~[-before the county judge/executive of his county]~~: "I, A B, do swear that I will do right, as well to the poor as to the rich, in all things belonging to my office as sheriff; that I will do no wrong to any one for any gift, reward or promise, nor for favor or hatred, and in all things I will faithfully and impartially execute the duties of my office according to the best of my skill and judgment, so help me God."
- (2) ***The oath specified in subsection (1) of this section may be administered by any person who may administer an oath pursuant to KRS 62.020. A person shall not administer the oath specified in subsection (1) of this section to himself or herself.***

Section 3. KRS 62.020 is amended to read as follows:

- (1) The official oath of any officer may be administered by:
 - (a) Any state or federal judge, with Kentucky jurisdiction;~~[-or]~~
 - (b) ***Any member of the General Assembly may administer an oath statewide; or***
 - (c) Any county judge/executive, notary public, clerk of a court, or justice of the peace, within his district or county.
- (2) For those officers listed in paragraphs (a), (b), (c), (d), and (e) of this subsection, the person administering the oath shall certify in writing that the oath of office was administered and the date of its administration. The person administering the oath shall file a written certification:
 - (a) In the Secretary of State's office for:
 1. A member of the General Assembly;
 2. An officer elected from the state at large;
 3. An officer elected from a district greater than one (1) county; or
 4. An officer elected from a city whose boundaries extend beyond those of a single county;
 - (b) In the Secretary of State's office for:
 1. An officer appointed cabinet secretary; or
 2. An officer appointed a deputy or assistant to an elected constitutional officer and who is required by separate statute to take the oath of office;
 - (c) In the Governor's office for the Secretary of State and the assistant Secretary of State;
 - (d) In the office of the county clerk for the county from which an officer is elected to countywide office or office for a district within the county. However, the requirements of this paragraph shall not apply when the requirements of paragraph (a) of this subsection apply; and
 - (e) In the office of a circuit clerk for a county clerk within the jurisdiction of that circuit clerk.

Approved April 5, 2007.

CHAPTER 133

(SB 14)

AN ACT relating to elections and declaring an emergency.

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

Section 1. KRS 117.255 is amended to read as follows:

- (1) The voter shall be instructed by the officers of election, with the aid of the instruction cards and the model, in the use of the machine, if the voter so requests.
- (2) Except for those voters who have been certified as requiring assistance on a permanent basis, no voter shall be permitted to receive any assistance in voting at the polls unless he makes and signs an oath that, because of blindness, other physical disability, or an inability to read English, he is unable to vote without assistance. The oath shall be upon a voter assistance form prescribed by the State Board of Elections. Any person assisting a voter shall complete the voter assistance form.
- (3) Upon making and filing the oath with the precinct clerk, the voter requiring assistance shall retire to the voting machine or ballot completion area with the precinct judges, and one (1) of the judges shall, in the presence of the other judge and the voter, operate the machine or complete the ballot as the voter directs. A voter requiring assistance in voting may, if he prefers, be assisted by a person of his own choice who is not an election officer, except that the voter's employer, an agent of the voter's employer, or an officer or agent of the voter's union shall not assist a voter.
- (4) The precinct election clerk shall swear a person assisting a voter in voting to operate the voting machine or complete the ballot in accordance with the directions of the voter, and the person sworn shall enter the voting

booth or ballot completion area and operate the machine or complete the ballot for the voter as the voter directs.

- (5) A voter who requires voting assistance on a permanent basis because of blindness or other physical disability may apply to the county board of elections for certification. Application may be made when registering to vote or completing the voter assistance form by indicating that the reason for obtaining assistance is permanent. The county board of elections shall determine whether the applicant requires assistance on a permanent basis. The county board of elections shall notify the county clerk of persons certified as requiring permanent voting assistance and the county clerk shall enter the certification on the voter's registration record. The State Board of Elections shall indicate on the precinct roster of voters those voters who are certified to receive assistance permanently without signing the voter assistance form at the precinct.
- (6) "Voting booth" or "ballot completion area" means an area in which a voter casts his vote or completes his ballot which is designed to insure the secrecy of the vote. No voter shall be assisted under this subsection unless the judges and the sheriff of election are satisfied of the truth of the facts stated in the oath. The voter shall state in his oath the specific reason that requires him to receive assistance.
- (7) No voter shall be permitted to occupy the voting machine more than two (2) minutes if other voters are waiting to use it, *except that those voters who because of a disability need extra time to cast a ballot shall be given a reasonable amount of time to vote.*
- (8) In primary elections, before a voter is permitted to use the voting machine, a judge of the election shall adjust the machine so that the voter will only be able to vote for the persons for whom the voter is qualified to vote.
- (9) If the machine is so constructed as to require adjustment after one person has voted before another person may vote, the judges of election shall adjust it after each person has voted.
- (10) The election officers shall constantly maintain a watch in order to prevent any person from voting more than once.
- (11) If supplemental paper ballots have been approved, as provided in KRS 118.215, the voter shall vote his ballot in privacy in a booth provided for that purpose by the county clerk. If the voter spoils his ballot, he shall return the spoiled paper ballot to an election official who shall stamp the ballot "Spoiled," initial and place the spoiled ballot in an envelope provided for that purpose. The voter shall be issued a second supplemental paper ballot. Upon completion of voting, the voter shall remove the numbered stub from the ballot, hand the stub to an election official and deposit the voted ballot in the locked ballot box in the presence of precinct election officials.
- (12) The election sheriff shall be responsible for reporting violations of this section.

Section 2. KRS 118.215 is amended to read as follows:

- (1) After the order of the names has been determined as provided in KRS 118.225, the Secretary of State shall certify, to the county clerks of the respective counties entitled to participate in the nomination or election of the respective candidates, the name, place of residence, and party of each candidate or slate of candidates for each office, as specified in the nomination papers or certificates and petitions of nomination filed with him, and shall designate the device with which the candidate groups, slates of candidates, or lists of candidates of each party shall be printed, in the order in which they are to appear on the ballot, with precedence to be given to the party that polled the highest number of votes at the preceding election for presidential electors, followed by the political party which received the second highest number of votes, with the order of any other political parties and independents to be determined by lot. Candidates for county offices and local state offices shall be listed in the following order: Commonwealth's attorney, circuit clerk, property valuation administrator, county judge/executive, county attorney, county clerk, sheriff, jailer, county commissioner, coroner, justice of the peace, and constable. The names of candidates for President and Vice President shall be certified in lieu of certifying the names of the candidates for presidential electors. The names shall be certified as follows:
 - (a) Not later than the second Monday after the filing deadline for the primary;
 - (b) Not less than twenty-five (25) days before a runoff primary;
 - (c) Not later than the second Monday after the filing deadline for the general election, except as provided in paragraph (d) of this subsection; and

- (d) Not later than the ~~Monday~~~~Thursday~~ after the *Friday following the* first Tuesday in September preceding a general election, for those years in which there is an election for President and Vice President of the United States.
- (2) Except as otherwise provided in subsection (3) of this section, all independent candidates or slates of candidates whose nominating petitions are filed with the county clerk or the Secretary of State shall be listed under the title and device designated by them as provided in KRS 118.315, or if none is designated, under the word "independent," and shall be placed on the ballot in a separate column or columns or in a separate line or lines according to the office which they seek. The order in which independent candidates or slates of candidates shall appear on the ballot shall be determined by lot by the county clerk. If the same device is selected by two (2) groups of petitioners, it shall be given to the first selecting it and the county clerk shall permit the other group to select a suitable device. This section shall not apply to candidates for municipal offices which come under subsection (3) of this section.
- (3) The ballots used at any election in which city officers are to be elected as provided in subsection (2) of this section shall contain the names of candidates for the city offices grouped according to the offices they seek, and the candidates shall be immediately arranged with and designated by the title of office they seek. The order in which the names of the candidates for each office are to be printed on the ballot shall be determined by lot. Each group of candidates for each separate office for which the candidates are to be elected shall be clearly separated from other groups on the ballot and spaced to avoid confusion on the part of the voter.
- (4) The Secretary of State shall not knowingly certify to the county clerk of any county the name of any candidate or slate of candidates who has not filed the required nomination papers, nor knowingly fail to certify the name of any candidate or slate of candidates who has filed the required nomination papers.
- (5) If the county clerk determines that the number of certified candidates or slates of candidates cannot be placed on a ballot which can be accommodated by the voting machines currently in use by the county, he shall so notify the State Board of Elections not later than the last Tuesday in February preceding the primary or the last Tuesday in August preceding the general election. The State Board of Elections shall meet within five (5) days of the notice, review the ballot conditions, and determine whether supplemental paper ballots are necessary for the election. Upon approval of the State Board of Elections, supplemental paper ballots may be used for nonpartisan candidates or slates of candidates for an office or offices and public questions submitted for a yes or no vote. All candidates or slates of candidates for any particular office shall be placed either on the machine ballot or on the paper ballot. Supplemental paper ballots may also be used to conduct the voting, in the instance of a small precinct as provided in KRS 117.066.
- (6) The ballot position of a candidate or slate of candidates shall not be changed after the ballot position has been designated by the county clerk.

Section 3. KRS 118.365 is amended to read as follows:

- (1) Certificates of nomination issued by the State Board of Elections shall be filed by that board with the Secretary of State immediately. The certificates issued by the county board of elections shall be filed by that board with the county clerk immediately.
- (2) Petitions of nomination for candidates for city offices except as provided in KRS 83A.047, for candidates for members of boards of education, and for candidates for supervisors of soil and water conservation districts shall be filed with the county clerk not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the holding of regular elections for the offices sought.
- (3) Candidates for an office, the nomination to which is to be made by a convention pursuant to KRS 118.325(1) and (2), except for the office of electors of President and Vice President of the United States, shall file the statements required by KRS 118.325(3), with the official designated in KRS 118.165 with whom notification and declaration are filed for the office, not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the second Tuesday in August preceding the regular election for the office sought.
- (4) Certificates of nomination made by the governing authority of a political party within the meaning of KRS 118.015 or a political organization not constituting a political party within the meaning of KRS 118.015 but whose candidate received two percent (2%) of the vote of the state at the last preceding election for presidential electors to fill vacancies in office, as provided in KRS 118.115 and 118.325, shall be filed as required with the Secretary of State or county clerk not earlier than the first Wednesday after the first Monday

in November of the year preceding the year in which the offices will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the election of the person in nomination.

- (5) Except as otherwise provided in this section, petitions of nomination shall be filed as required with the Secretary of State or county clerk not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the holding of general elections for the offices sought. Certificates of nomination shall be filed with the Secretary of State or county clerk, as required by law, not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the holding of general elections for the offices sought. The filing of petitions of nomination for independent candidates shall not be accepted by the Secretary of State or the county clerk if the candidate has not filed a statement-of-candidacy form as required by KRS 118.367.
- (6) Petitions and certificates of nomination for electors of President and Vice President of the United States shall be filed with the Secretary of State not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which there is an election for President and Vice President of the United States and not later than the ***Friday following the*** first Tuesday in September preceding the date fixed by law for the election of the electors.
- (7) Petitions for recall elections or elections on public questions shall be filed as required with the county clerk not later than the second Tuesday in August preceding the day fixed by law for holding a general election.
- (8) Petitions of any kind named in this section, statements, and certificates of nomination shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which such papers are permitted to be filed.

Section 4. Whereas it is necessary to update election statutes in a timely manner before the primary election, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved April 5, 2007.

CHAPTER 134

(HB 246)

AN ACT relating to deceptive business practices.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) ***A person may not misrepresent the geographical location of a business that derives fifty percent (50%) or more of its gross income from the sale or arranging for the sale of flowers or floral arrangements in the listing of the business in a telephone directory or other directory assistance database.***
- (2) ***A person is considered to misrepresent the geographical location of a business in a telephone directory or other directory assistance database if the name of the business indicates that the business is located in a geographical area, and:***
 - (a) ***The business is not located within the geographical area indicated;***
 - (b) ***The listing fails to identify the municipality and state of the business's geographical location; and***
 - (c) ***A telephone call to the local telephone number listed in the telephone directory or directory assistance database routinely is forwarded or transferred to a location that is outside the calling area covered by the telephone directory or directory assistance database in which the number is listed.***
- (3) ***A person may place a directory listing for a business described in subsection (1) of this section whose name indicates that it is located in a geographical area that is different from the geographical area in which the business is actually located, only if a conspicuous notice in the listing states the municipality and state in which the business is located.***

- (4) *This section does not apply to a publisher of a telephone directory or other publication or a provider of a directory assistance service publishing or providing information about another business.*
- (5) *This section creates no duty and imposes no obligation upon anyone other than the business that is the subject of the advertisement or listing.*
- (6) *This section applies only to information supplied to a telephone directory published after the effective date of this Act or to information supplied for entry into a directory assistance database after the effective date of this Act.*

Section 2. KRS 367.990 is amended to read as follows:

- (1) Any person who violates the terms of a temporary or permanent injunction issued under KRS 367.190 shall forfeit and pay to the Commonwealth a civil penalty of not more than twenty-five thousand dollars (\$25,000) per violation. For the purposes of this section, the Circuit Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the Commonwealth may petition for recovery of civil penalties.
- (2) In any action brought under KRS 367.190, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by KRS 367.170, the Attorney General, upon petition to the court, may recover, on behalf of the Commonwealth, a civil penalty of not more than two thousand dollars (\$2,000) per violation, or where the defendant's conduct is directed at a person aged sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000) per violation, if the trier of fact determines that the defendant knew or should have known that the person aged sixty (60) or older is substantially more vulnerable than other members of the public.
- (3) Any person with actual notice that an investigation has begun or is about to begin pursuant to KRS 367.240 and 367.250 who intentionally conceals, alters, destroys, or falsifies documentary material is guilty of a Class A misdemeanor.
- (4) Any person who, in response to a subpoena or demand as provided in KRS 367.240 or 367.250, intentionally falsifies or withholds documents, records, or pertinent materials that are not privileged shall be subject to a fine as provided in subsection (3) of this section.
- (5) The Circuit Court of any county in which any plan described in KRS 367.350 is proposed, operated, or promoted may grant an injunction without bond, upon complaint filed by the Attorney General to enjoin the further operation thereof, and the Attorney General may ask for and the court may assess civil penalties against the defendant in an amount not to exceed the sum of five thousand dollars (\$5,000) which shall be for the benefit of the Commonwealth of Kentucky.
- (6) Any person, business, or corporation who knowingly violates the provisions of KRS 367.540 shall be guilty of a violation. It shall be considered a separate offense each time a magazine is mailed into the state; but it shall be considered only one (1) offense for any quantity of the same issue of a magazine mailed into Kentucky.
- (7) Any solicitor who violates the provisions of KRS 367.513 or 367.515 shall be guilty of a Class A misdemeanor.
- (8) In addition to the penalties contained in this section, the Attorney General, upon petition to the court, may recover, on behalf of the Commonwealth a civil penalty of not more than the greater of five thousand dollars (\$5,000) or two hundred dollars (\$200) per day for each and every violation of KRS 367.175.
- (9) Any person who shall willfully and intentionally violate any provision of KRS 367.976 to 367.985 shall be guilty of a Class B misdemeanor.
- (10)
 - (a) Any person who violates the terms of a temporary or permanent injunction issued under KRS 367.665 shall forfeit and pay to the Commonwealth a penalty of not more than five thousand dollars (\$5,000) per violation. For the purposes of this section, the Circuit Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the Commonwealth may petition for recovery of civil penalties;
 - (b) The Attorney General may, upon petition to a court having jurisdiction under KRS 367.190, recover on behalf of the Commonwealth from any person found to have willfully committed an act declared unlawful by KRS 367.667 a penalty of not more than two thousand dollars (\$2,000) per violation; and

- (c) Any person who knowingly violates any provision of KRS 367.652, 367.653, 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false or incorrect information to the Attorney General in filing statements or reports required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.
- (11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under KRS 367.765 shall be liable for a penalty of one hundred dollars (\$100) per violation to be collected in the name of the Commonwealth upon action of the Attorney General.
- (12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be liable for a penalty not exceeding one thousand dollars (\$1,000) to be collected in the name of the Commonwealth upon action by the Attorney General.
- (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or 367.816 shall be guilty of a Class C felony.
- (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have authority to prosecute violations of KRS 367.801 to 367.819.
- (15) A violation of KRS 367.474 to 367.478 and 367.482 is a Class C felony. Either the Attorney General or the appropriate Commonwealth's attorney shall have authority to prosecute violators of KRS 367.474 to 367.478 and 367.482.
- (16) Any person who violates KRS 367.310 shall be guilty of a violation.
- (17) Any person, partnership, or corporation who violates the provisions of KRS 367.850 shall be guilty of a Class A misdemeanor.
- (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets back, disconnects, fails to connect, or causes to be changed, set back, or disconnected, the speedometer or odometer of any motor vehicle, to effect the sale of the motor vehicle shall be guilty of a Class D felony.
- (19) Any person who negotiates a contract of membership on behalf of a club without having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty of a Class D felony.
- (20) Any person or corporation who operates or attempts to operate a health spa in violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.
- (21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony; and
(b) The appropriate Commonwealth's attorney shall have authority to prosecute felony violations of KRS 367.832.
- (22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be guilty of a violation. Either the Attorney General or the appropriate county health department may prosecute violators of KRS 367.855 or 367.857.
(b) The provisions of this subsection shall not apply to any retail establishment if the wholesaler, distributor, or processor fails to comply with the provisions of KRS 367.857.
- (23) Notwithstanding any other provision of law, any telemarketing company, telemarketer, caller, or merchant shall be guilty of a Class D felony when that telemarketing company, telemarketer, caller, or merchant three (3) times in one (1) calendar year knowingly and willfully violates KRS 367.46955(15)(a) by making or causing to be made an unsolicited telephone solicitation call to a telephone number that appears in the current publication of the zero call list maintained by the Office of the Attorney General, Division of Consumer Protection.
- (24) Notwithstanding any other provision of law, any telemarketing company, telemarketer, caller, or merchant shall be guilty of a Class A misdemeanor when that telemarketing company, telemarketer, caller, or merchant uses a zero call list identified in KRS 367.46955(15) for any purpose other than complying with the provisions of KRS 367.46951 to 367.46999.
- (25) (a) Notwithstanding any other provision of law, any telemarketing company, telemarketer, caller, or merchant that violates KRS 367.46951 to 367.46999 shall be assessed a civil penalty of not more than five thousand dollars (\$5,000) for each offense.

- (b) The Attorney General, or any person authorized to act in his or her behalf, shall initiate enforcement of a civil penalty imposed under paragraph (a) of this subsection.
 - (c) Any civil penalty imposed under paragraph (a) of this subsection may be compromised by the Attorney General or his or her designated representative. In determining the amount of the penalty or the amount agreed upon in compromise, the Attorney General, or his or her designated representative, shall consider the appropriateness of the penalty to the financial resources of the telemarketing company, telemarketer, caller, or merchant charged, the gravity of the violation, the number of times the telemarketing company, telemarketer, caller, or merchant charged has been cited, and the good faith of the telemarketing company, telemarketer, caller, or merchant charged in attempting to achieve compliance, after notification of the violation.
 - (d) If a civil penalty is imposed under this subsection, a citation shall be issued which describes the violation which has occurred and states the penalty for the violation. If, within fifteen (15) working days from the receipt of the citation, the affected party fails to pay the penalty imposed, the Attorney General, or any person authorized to act in his or her behalf, shall initiate a civil action to collect the penalty. The civil action shall be taken in the court which has jurisdiction over the location in which the violation occurred.
- (26) ***Any person who violates Section 1 of this Act shall be liable for a penalty of two thousand five hundred dollars (\$2,500) per violation. Either the Attorney General or the appropriate Commonwealth's attorney may prosecute violations of Section 1 of this Act.***

Approved April 5, 2007.

CHAPTER 135

(HB 381)

AN ACT relating to motor vehicles.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

Any motor vehicle that meets the age requirements of a "historic vehicle" as used in KRS 186.043(2) and is registered in accordance with KRS 186.050 may display an authentic Kentucky license plate, twenty-five (25) years or older, or a reproduction of such a plate, if the current motor vehicle plate and the registration receipt are kept in the vehicle at all times.

Section 2. KRS 186A.115 is amended to read as follows:

- (1) Except as otherwise provided in this section, the owner of every vehicle brought into this state and required to be titled in this state shall, before submitting his application for title to the county clerk, have the vehicle together with his application for title and its supporting documents inspected by a certified inspector in the county in which the application for title is to be submitted to the county clerk.
 - (a) The certified inspector shall be certified through the Department of Vehicle Regulation following requirements set forth by the department by regulation and shall be designated by the county sheriff. The certified inspector will be held responsible for all certifications required pursuant to this chapter and will be liable for any and all penalties prescribed in this chapter, and shall be available during regular office hours at any and all offices and branches that issue applications for titles.
 - (b) There shall be a five dollar (\$5) fee for this certification, payable to the sheriff's office, upon completion of certification.
 - (c) There shall be an additional fee of ten dollars (\$10) per trip when it becomes necessary for the certified inspector to travel to the site of the vehicle rather than bringing the vehicle to the sheriff's inspection area.
 - (d) An inspection conducted in one (1) county within the Commonwealth of Kentucky under this subsection, and the fees paid for that inspection under this subsection, shall be honored by the certified inspector, sheriff, and county clerk in all other counties within this state. A second inspection shall not be required and additional fees shall not be required.

- (2) The following vehicles are excluded from the requirement of inspection by a certified inspector prior to titling in this state:
- (a) New motor vehicles sold by a dealer licensed in this state;
 - (b) Vehicles required to be registered in this state by reason of lack of a reciprocity agreement with another state and for which a nonnegotiable registration document is to be issued;
 - (c) Motor vehicles operated by a motor carrier under a nonnegotiable certificate or permit issued by the Department of Vehicle Regulation;
 - (d) Motor vehicles owned by servicemen or servicewomen who are residents of Kentucky stationed outside of Kentucky may be inspected by the post provost or similar officer of the camp, post, or station. The post provost or similar officer shall submit an affidavit stating the name of the owner, the identification or serial number, the make, body style, current license or title number, if any, and state in which currently registered or titled, if any, of the motor vehicle;
 - (e) Motor vehicles purchased in another state by persons who are residents of Kentucky but are temporarily residing out of state for at least thirty (30) days, but not longer than nine (9) months, may after the purchase of the vehicle be inspected by the state police, a local law enforcement agency, or the vehicle inspection program of another state. If an inspector in another state examines a vehicle under this paragraph, the purchaser may request the inspector to complete an affidavit stating the name of the owner, the vehicle identification number, the vehicle make and body style, the current state of registration, if any, and the current vehicle license or title number, if any. The Transportation Cabinet shall create an affidavit form containing at a minimum this information and shall post the form on the cabinet's Internet Web site. A person using an inspector in another state under this paragraph shall comply with all requirements of that state's inspection program, including payment of fees charged in that state. A person registering a motor vehicle for the first time in Kentucky under this paragraph shall transmit the application for registration, all supporting documentation, and payment for registration and usage tax to the county clerk of the county in which the person resides, and upon receipt of the appropriate documentation, the county clerk shall register the vehicle; and
 - (f) Motor vehicles no longer located in Kentucky but which require inspection in order to issue a corrected Kentucky title due to error in vehicle identification or serial number may be inspected by an inspector authorized to inspect vehicle identification or serial number by the laws of the state or foreign country where application for a new title has been submitted.
- (3) When presented to a certified inspector for inspection or to a county clerk for processing, the owner's application for a first certificate of registration or title in his name shall be accompanied by proof of insurance in compliance with KRS 304.39-080 and one (1) of the following documents as applicable:
- (a) If the vehicle is a new vehicle not previously registered in this state, the properly assigned manufacturer's statement of origin for the vehicle for which registration or title is sought;
 - (b) If the vehicle was last registered in this state, and is a vehicle for which a title is not required in this state, a certificate of registration, or if the vehicle is one for which a certificate of title is required in this state, a properly assigned certificate of title;
 - (c) If the vehicle was last previously titled in another state, a properly assigned certificate of title;
 - (d) If the application refers to a vehicle previously registered in another country, the documents of that country establishing ownership of the vehicle;
 - (e) If the application refers to a vehicle last previously registered in another country by a person on active duty in the Armed Forces of the United States, the county clerk may accept on behalf of the Department of Vehicle Regulation evidence of ownership provided the applicant by the United States Department of Defense; and
 - (f) Except as provided in KRS 186A.072(2)(c) governing custom-built motorcycles, if the application relates to a vehicle which has been specially constructed or reconstructed, that fact shall be stated in the application, and the application shall be accompanied by the documents specified by administrative regulations of the Department of Vehicle Regulation.

- (4) When requested to inspect a vehicle pursuant to this section, the certified inspector shall personally and physically inspect the vehicle, when registration or title is sought in this state, on the following points:
- (a) He shall ensure that the application is legible and properly executed to the extent required at the time of execution;
 - (b) He shall compare the vehicle identification number as appearing on both the vehicle identification number plate, and the federal safety standards label of the vehicle which is sought to be registered or titled, with the corresponding number inscribed on the application, and its supporting documentation, and ensure that the vehicle identification number appearing at each described location appears legitimate and that they are consistent with each other;
 - (c) He shall examine the primary odometer of the vehicle and legibly record the reading in the space provided in the inspection section of the application; and
 - (d) After exercising due diligence in inspecting the vehicle, the application, and its supporting documentation, and finding that they appear to be in order, the certified inspector shall execute the preprinted certificate of inspection according to its terms by printing in the spaces provided his first name, middle initial, and last name, and his title; the name of the county in which he serves; and the telephone number including the telephone area code of his agency, and sign in ink his signature in the space provided, and print the month, day, and year in which his inspection was made, certifying under penalty of forgery in the second degree the character, accuracy, and date of his inspection.
- (5) The certified inspector shall refrain from executing the certificate of inspection if:
- (a) He has not personally and physically inspected the vehicle in accordance with this section;
 - (b) He has reason to believe that the vehicle displays an unlawfully altered vehicle identification number;
 - (c) The application and any of its copies are illegible or otherwise improperly executed, or contain information reasonably believed to be inaccurate or fraudulent;
 - (d) The documentation required in support of any application is not present, or not consistent with the vehicle and the owner's application or appears fraudulent; or
 - (e) He has probable cause to believe the vehicle is stolen.
- (6) ***Inspections on motor vehicles that meet the definition of a historic vehicle under KRS 186.043(2) and are brought into this state shall be limited to verification of the vehicle identification number with supporting documentation for purposes of titling.***

Approved April 5, 2007.

CHAPTER 136

(HB 490)

AN ACT relating to the construction industry.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 371 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6 of this Act:

- (1) ***"Construction" means the process of building, altering, repairing, improving, or demolishing any structures or buildings, or other improvements of any kind to any real property, but does not include processing equipment used for the process of manufacturing or the routine maintenance of existing structures, buildings, or real property;***
- (2) ***"Contract" means a contract or agreement concerning construction made and entered into by and between a contracting entity and a contractor, a contractor and a subcontractor, or a subcontractor and another subcontractor;***
- (3) ***"Contracting entity" means an owner of real property; a trustee or agent of an owner of real property; or a public official, public authority, or other public entity authorized to contract under the Kentucky Revised Statutes;***

- (4) *"Contractor" means a person performing construction and having a contract with a contracting entity;*
- (5) *"Disputed amount" means to question in good faith the validity, either in whole or part, of a request for payment asserted by any party;*
- (6) *"Owner" means a person who holds an ownership interest in real property;*
- (7) *"Person" means an individual, corporation, estate, trust, partnership, limited liability company, association, joint venture, or any other legal entity;*
- (8) *"Processing equipment" means equipment which uses physical or chemical methods to increase the value of a raw material or product and is installed by the person contractually responsible to the contracting entity for the design, purchase, installation, and performance of that equipment;*
- (9) *"Retainage" means money earned by a contractor or subcontractor but withheld to ensure proper performance by the contractor or subcontractor and that shall be paid upon completion of contractual obligations;*
- (10) *"Subcontractor" means any person performing construction covered by a contract between a contracting entity and a contractor who does not have a contract with the contracting entity; and*
- (11) *"Undisputed amount" means a good faith, valid, accurate, timely request for payment which has been submitted to any entity owing money, that the recipient of the request for payment has reviewed and agrees that the money is due and owing.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 371 IS CREATED TO READ AS FOLLOWS:

- (1) *All payments on construction contracts entered into after the effective date of Sections 1 to 6 of this Act shall be made pursuant to the terms of the contract and as required in this section and Section 3 of this Act.*
- (2) *The following provisions in a contract for construction shall be against the public policy of this Commonwealth and shall be void and unenforceable:*
 - (a) *A provision that purports to waive, release, or extinguish the right to resolve disputes through litigation, in court or substantive or procedural rights in connection with such litigation, except that a contract may require binding arbitration as a substitute for litigation or require nonbinding alternative dispute resolution as a prerequisite to litigation;*
 - (b) *A provision that purports to waive, release, or extinguish rights provided by KRS Chapter 376 with the exception of partial waivers of lien rights provided by the contractor or subcontractor for progress payments; or*
 - (c) *A provision that purports to waive, release, or extinguish the right of a contractor or subcontractor to recover costs, additional time, or damages, or obtain an equitable adjustment of the contract, for delays in performing the contract that are, in whole or part, within the control of the contracting entity. Unusually bad weather that cannot be reasonably anticipated, fire, or other act of God shall not automatically entitle the contractor to additional compensation under this paragraph.*
- (3) *Paragraph (c) of subsection (2) of this section shall not render null, void, and unenforceable a contract provision that:*
 - (a) *Permits a contractor or subcontractor to recover that portion of delay costs caused by acts or omissions of the contracting entity;*
 - (b) *Requires notice of any delay by the party affected by the delay;*
 - (c) *Provides for reasonable liquidated damages;*
 - (d) *Provides for arbitration or any other procedure designed to resolve contract disputes; or*
 - (e) *Specifies which costs are recoverable by a contractor or subcontractor for delay.*
- (4) *If a provision of a construction contract is found to be null and unenforceable, that provision shall not affect other provisions of the contract that are in compliance with this section and, to this end, the provisions of the contract are severable.*

- (5) *Except as provided in subsection (7) of this section, all contracts for construction shall provide that payment of amounts due a contractor from a contracting entity, except retainage, shall be made within thirty (30) business days after the contracting entity receives a timely, properly completed, undisputed request for payment.*
- (6) *Except as provided in subsection (7) of this section, if the contracting entity fails to pay a contractor within thirty (30) business days following receipt of a timely, properly completed, undisputed request for payment, the contracting entity shall pay interest to the contractor beginning on the thirty-first business day after receipt of the request for payment, computed at the rate of twelve percent (12%) per annum on the unpaid amount. Twenty-five (25) business days following the submission of a timely, properly completed, undisputed request for payment, the contractor shall notify the contracting entity by certified mail if payment has not been received. The notice shall also include the date on which interest shall begin to accrue.*
- (7) *For purposes of subsections (5) and (6) of this section, a postsecondary institution and a board of education shall have forty-five (45) business days to make the payment required by those subsections. For purposes of payments by a board of education, the Department of Education shall have ten (10) business days, including the day the undisputed request for payment is received, to complete the final approval and application for payment and return it to the board of education. The ten (10) business days shall be included in the forty-five (45) business days. If the contracting entity fails to pay a contractor within forty-five (45) business days after receipt of the timely, properly completed, undisputed request for payment, the contracting entity shall, beginning on the forty-sixth day after receipt of the request, pay interest to the contractor computed at the rate of twelve percent (12%) per annum on the unpaid amount.*
- (8) *A contractor shall pay its subcontractors any undisputed amounts due within fifteen (15) business days of receipt of payment from the contracting entity, including payment of retainage if retainage is released by the contracting entity, if the subcontractor has provided a timely, properly completed, and undisputed request for payment to the contractor.*
- (9) *If a contractor fails to pay a subcontractor any undisputed amounts due within fifteen (15) business days of receipt of payment from the contracting entity, the contractor shall pay interest to the subcontractor beginning on the sixteenth business day after receipt of payment by the contractor, computed at the rate of twelve percent (12%) per annum on the unpaid amount.*
- (10) *Subsections (8) and (9) of this section shall apply to all payments from subcontractors to their subcontractors.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 371 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, until fifty percent (50%) of the construction project has been completed in accordance with the contract, a contracting entity, contractor, or subcontractor may withhold no more than ten percent (10%) retainage from the amount of any undisputed payment due, and retainage held after fifty-one percent (51%) of the construction project has been completed shall not be more than five percent (5%) of the total contract amount.*
- (2) *Within thirty (30) days after substantial completion of a construction project, the contracting entity or contractor shall release the retainage less an amount equal to two hundred percent (200%) of the contracting entity's reasonably estimated cost of the balance of any contractor's or subcontractor's contractually obligated, yet uncompleted, work remaining. The contracting entity's agent shall determine the reasonably estimated cost due under this subsection. The contracting entity, contractor, and any subcontractor with work yet to be completed shall mutually agree with the schedule for completion of the work necessary for release of final payment. Within fifteen (15) business days after the retainage has been released by the contracting entity to the contractor, the contractor shall release to the subcontractors their proportional shares of the retainage. For purposes of this subsection, "substantial completion" is the point at which, as certified in writing by the contracting entity, a project is at the level of completion, in strict compliance with the contract, where:*
 - (a) *Necessary approval by public regulatory authorities has been given;*
 - (b) *The owner has received all required warranties and documentation, and*
 - (c) *The owner may enjoy beneficial use or occupancy and may use, operate, and maintain the project in all respects, for its intended purpose.*

Partial use or occupancy shall not necessarily result in the project being deemed substantially complete and shall not be evidence of substantial completion.

- (3) *If a contracting entity, contractor, or subcontractor fails to pay retainage, if any, pursuant to the terms of a contract or as required in this section, the contracting entity, contractor, or subcontractor shall pay interest to the contractor or subcontractor to whom payment was due, beginning on the first business day after the payment was due, at the rate of twelve percent (12%) per annum.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 371 IS CREATED TO READ AS FOLLOWS:

In any action to enforce Sections 1 to 6 of this Act, including arbitration, the court or arbitrator shall award costs and reasonable attorney fees to the prevailing party if the losing party is deemed to have acted in bad faith. For public construction contracts, recovery of attorney fees under this section shall be limited to the public contract rate for attorney's fees. Venue of such an action shall be within the Commonwealth of Kentucky.

SECTION 5. A NEW SECTION OF KRS CHAPTER 371 IS CREATED TO READ AS FOLLOWS:

- (1) *Sections 1 to 6 of this Act shall be known and may be cited as the Kentucky Fairness in Construction Act.*
- (2) *Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, after a judgment for the contractor against a contracting entity is entered by a court of competent jurisdiction, a contractor has sixty (60) days to file a mechanic's lien as provided in KRS Chapter 376. The filing of this lien shall not preclude the contractor from seeking additional relief. This subsection shall not apply to public construction contracts with lien rights governed under KRS 376.250.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 371 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsections (3) and (4) of this section, Sections 1 to 6 of this Act shall apply to public construction and public works projects, and to private construction, excluding residential construction.*
- (2) *Sections 1 to 6 of this Act shall apply to construction contracts entered into after the effective date of Sections 1 to 6 of this Act.*
- (3) *Sections 1 to 6 of this Act shall not apply to contracts entered into by a borrower of funds that are provided, insured, or guaranteed by the United States Department of Agriculture's Rural Utilities Service, or financed under a lien accommodation by the Rural Utilities Service.*
- (4) *Sections 1 to 6 of this Act shall not apply to any contract for construction of or relating to any facility as defined in KRS Chapter 278.*

Section 7. KRS 376.230 is amended to read as follows:

- (1) The lien provided for in KRS 376.210 shall be dissolved unless the person who furnishes the labor, materials, or supplies shall, *whichever is later*, within sixty (60) days after the last day of the month in which any labor, materials, or supplies were furnished, *or by the date of substantial completion*, file in the county clerk's office of each county in which labor, materials, or supplies were furnished, except as hereinafter provided, a statement in writing verified by affidavit of the claimant or his or her authorized agent or attorney, setting forth the amount due for which the lien is claimed, the date on which labor, materials, or supplies were last furnished and the name of the canal, railroad, bridge, public highway, or other public improvement upon which it is claimed.
- (2) In all cases where a lien is claimed for labor, materials, or supplies furnished for the improvement of any bridge, public highway, or other public property owned by the state or by any county, charter county, urban-county, consolidated local government, or city, the statement of lien shall be filed only in the county clerk's office of the county in which the seat of government of the owner of the property is located.
- (3) The county clerk, upon the filing of the statement, shall make an abstract and entry thereof as now provided by law in case of mechanics' liens in the same book used for that purpose, and shall make proper index thereof. The clerk shall be paid by the party filing the claim, and for attesting any copy of the lien statement. If he or she is required to make the copy, he or she may make an additional charge as provided by law. The clerk's fees shall be determined pursuant to KRS 64.012. All of these charges may be recovered by the lien claimant as costs from the party and out of the fund against which the claim is filed.

Approved April 5, 2007.

CHAPTER 137**(HB 334)**

AN ACT relating to relating to postsecondary education.

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

SECTION 1. A NEW SECTION OF SUBTITLE 5 OF KRS CHAPTER 271B IS CREATED TO READ AS FOLLOWS:

A corporation that changes the mailing address of its principal office shall deliver to the Secretary of State for filing, on a form supplied by the Secretary of State, a statement of change that sets forth:

- (1) The name of the corporation;*
- (2) The mailing address of its principal office prior to the change; and*
- (3) The new mailing address of its principal office.*

SECTION 2. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 271B IS CREATED TO READ AS FOLLOWS:

A corporation may be converted to a limited liability company as provided in Section 16 of this Act.

SECTION 3. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO READ AS FOLLOWS:

A corporation that changes the mailing address of its principal office shall deliver to the Secretary of State for filing, on a form supplied by the Secretary of State, a statement of change that sets forth:

- (1) The name of the corporation;*
- (2) The mailing address of its principal office prior to the change; and*
- (3) The new mailing address of its principal office.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

- (1) Except as may be otherwise provided in a written operating agreement, a limited liability company may sell, lease, exchange, or otherwise dispose of all or substantially all of its property with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by a majority-in-interest of the members.*
- (2) Unless otherwise provided in the articles of organization or a written operating agreement, no member shall have the right to dissent from a sale, lease, exchange, or other disposition by a limited liability company of all or substantially all of its property outside the ordinary course of business.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

- (1) A limited liability company may acquire all or part of the outstanding shares of one (1) or more classes or series of a domestic or foreign corporation if the corporation, limited liability company, and a majority of their owners approve the exchange and, if the corporation is a foreign corporation, the share exchange is permitted under the laws of the state or country under which the foreign corporation is incorporated.*
- (2) The plan of share exchange shall set forth:*
 - (a) The name of the corporation whose shares will be acquired and the name of the acquiring limited liability company;*
 - (b) The terms and conditions of the exchange; and*
 - (c) The manner and basis of exchanging the shares to be acquired for limited liability company interests, obligations, or other securities of the acquiring limited liability company or for cash or other property, in whole or part.*
- (3) The plan of share exchange may set forth other provisions relating to the exchange.*
- (4) This section shall not limit the power of a limited liability company to acquire all or part of the shares of one (1) or more classes or series of a corporation through a voluntary exchange or otherwise.*

- (5) *Unless otherwise provided in the articles of organization, a written operating agreement, or a written plan of share exchange, no member of a limited liability company shall have the right to dissent from a share exchange.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

- (1) *Unless otherwise provided in a written operating agreement, the plan of share exchange described in Section 5 of this Act shall be considered for adoption by the members of the limited liability company.*
- (2) *Each business entity that is a party to the share exchange shall approve the plan of share exchange in the manner and by the vote required by the laws applicable to the business entity.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

- (1) *After a plan of share exchange has been approved in accordance with Section 6 of this Act, the acquiring limited liability company shall deliver to the Secretary of State for filing the articles of share exchange setting forth:*
- (a) *The plan of share exchange; and*
- (b) *A statement that the plan of share exchange was duly authorized and approved by each of the constituent business entities in accordance with the laws applicable to each business entity.*
- (2) *A share exchange shall take effect upon the effective date of the articles of share exchange.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

When a share exchange takes effect, the shares of each acquired corporation shall be exchanged as provided in the plan, and the former holders of the shares shall be entitled only to the exchange rights provided in the articles of share exchange.

SECTION 9. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

- (1) *A nonprofit limited liability company shall not have or issue membership interests in the limited liability company, and no distribution shall be paid and no part of the income or profit of the limited liability company shall be distributed to its members or managers.*
- (2) *A nonprofit limited liability company may pay compensation in a reasonable amount to its members or managers for services rendered and may confer benefits upon its members in conformity with its purposes, and these payments or benefits shall not be deemed to be a distribution of income or profit.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

No loan shall be made by a nonprofit limited liability company to its members or managers, and any member or manager who assents to or participates in the making of a loan violating this prohibition shall be liable to the limited liability company for the amount of the loan until its repayment.

SECTION 11. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

The assets of a nonprofit limited liability company in the process of dissolution shall be applied and distributed as follows:

- (1) *All liabilities and obligations of the nonprofit limited liability company shall be paid and discharged, or adequate provisions made for them;*
- (2) *Assets received and held by the nonprofit limited liability company upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with the condition's requirements;*
- (3) *Assets received and held by the nonprofit limited liability company subject to limitations permitting their use only for a nonprofit purpose, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one (1) or more domestic or foreign nonprofit corporations, limited liability companies, societies, or organizations engaged in activities substantially similar to those of the dissolving nonprofit limited liability company, pursuant to a plan of distribution; and*

- (4) *Any remaining assets may be distributed to those nonprofit corporations, limited liability companies, societies, or organizations as may be specified in a plan of dissolution including those that are members of the nonprofit limited liability companies.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

- (1) *In proceedings to liquidate the assets and affairs of a nonprofit limited liability company, the court shall have the power to issue injunctions and to appoint a receiver or receivers while the action is pending. The receivers shall have those powers and duties as the court from time to time may direct, to take action to preserve the corporate assets wherever situated, and to carry on the affairs of the nonprofit limited liability company until a full hearing can be held.*
- (2) *After holding a hearing, upon notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the nonprofit limited liability company. The liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the nonprofit limited liability company wherever situated, either at public or private sale. The order appointing the liquidating receiver or receivers shall state their powers and duties. The powers and duties may be increased or diminished at any time during the proceedings.*
- (3) *The assets of the nonprofit limited liability company or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:*
- (a) *All costs and expenses of the court proceedings and all liabilities and obligations of the nonprofit limited liability company shall be paid, satisfied, and discharged, or adequate provision for them shall be made;*
- (b) *Assets held by the nonprofit limited liability company upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with the condition's requirements;*
- (c) *Assets received and held by the nonprofit limited liability company subject to limitations permitting their use only for a nonprofit purpose, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one (1) or more domestic or foreign nonprofit limited liability companies, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating nonprofit limited liability company as the court may direct; and*
- (d) *Any remaining assets may be distributed to those persons, societies, organizations, or domestic or foreign limited liability companies, whether for profit or nonprofit, specified in the plan of distribution adopted or, if no plan of distribution has been adopted, as the court may direct.*
- (4) *The court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the nonprofit limited liability company or the proceeds of any sale or disposition of the assets.*
- (5) *A receiver of a nonprofit limited liability company appointed under the provisions of this section shall have authority to sue and defend in all courts in the receiver's own name as receiver of the nonprofit limited liability company. The court appointing the receiver shall have exclusive jurisdiction of the nonprofit limited liability company and its property, wherever situated.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

A nonprofit limited liability company may be involuntarily dissolved by a decree of the Circuit Court in an action filed by the Attorney General when it is established that:

- (1) *The nonprofit limited liability company is guilty of abuse or misuse of its powers, privileges, or franchises, or the nonprofit limited liability company has become detrimental to the interest and welfare of this Commonwealth or its citizens; or*
- (2) *The nonprofit limited liability company procured its articles of organization through fraud.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

Any action brought by the Attorney General for the involuntary dissolution of a nonprofit limited liability company may be commenced in Franklin Circuit Court or in the Circuit Court of the county in which the registered office of the nonprofit limited liability company is situated.

SECTION 15. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

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, then 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.

SECTION 16. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

- (1) A corporation may be converted to a limited liability company pursuant to this section.*
- (2) The terms and conditions of the conversion of a corporation to a limited liability company shall be set forth in a written plan of conversion and approved by the board of directors and by the shareholders of the corporation.*
- (3) The plan of conversion shall set forth:*
 - (a) The name of the corporation planning to convert;*
 - (b) The terms and conditions of the conversion, including the articles of organization and the written operating agreement, if any, of the limited liability company into which the corporation will convert; and*
 - (c) The manner and basis of converting the shares of the corporation into membership interests, obligations, or other securities of the limited liability company or into cash or other property in whole or part.*
- (4) The plan of conversion may set forth any other provision relating to the conversion.*
- (5) For a plan of conversion to be approved:*
 - (a) The board of directors shall recommend the plan of conversion to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the shareholders with a plan; and*
 - (b) The shareholders entitled to vote shall approve the plan.*
- (6) The board of directors may condition its submission of the proposed conversion on any basis.*
- (7) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with KRS 271B.7-050. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of conversion and contain or be accompanied by a copy or summary of the plan.*
- (8) Unless KRS Chapter 271B, the articles of incorporation, or the board of directors acting pursuant to subsection (6) of this section, require a greater vote or vote by voting groups, the plan of conversion to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.*
- (9) Separate voting by voting groups shall be required on a plan of conversion if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would require action by one (1) or more separate voting groups on the proposed amendment under KRS 271B.10-040.*
- (10) After a conversion is authorized, and at any time before articles of organization are filed, the planned conversion may be abandoned subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of conversion or, if none is set forth, in the manner determined by the board of directors.*

- (11) *After the conversion is approved, the corporation shall file articles of organization with the office of the Secretary of State that satisfy the requirements of Section 95 of this Act and also include:*
- (a) *A statement that the corporation was converted to a limited liability company;*
 - (b) *Its former name;*
 - (c) *A statement that any assumed name held by the corporation has been canceled; and*
 - (d) *The designation, number of outstanding shares, and number of votes to be cast by each voting group entitled to vote separately on the plan of conversion and either the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.*
- (12) *The conversion shall take effect when the articles of organization are filed with the office of the Secretary of State or, subject to Section 100 of this Act, at a later date specified in the articles of organization.*

SECTION 17. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

- (1) *A corporation that has been converted pursuant to this chapter shall be 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 corporation shall remain vested in the converted limited liability company without assignment, reversion, or impairment;*
 - (b) *All obligations of the converting corporation shall continue as obligations of the converted limited liability company;*
 - (c) *An action or proceeding pending against the converting corporation may be continued as if the conversion had not occurred, and the name of the converted limited liability company may be substituted in any pending action or proceeding for the name of the converting corporation; and*
 - (d) *The written operating agreement of the converted limited liability company shall be binding upon each person who becomes a member of the limited liability company.*

SECTION 18. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *A limited liability company may convert into a limited partnership as provided in KRS 362.2-1102(4).*
- (2) *The terms and conditions of the conversion of a limited liability company into a limited partnership shall be approved by all of the members notwithstanding any provision to the contrary in the operating agreement.*

SECTION 19. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as authorized by subsections (2) and (3) of this section, the name of a business trust or foreign business trust qualified to transact business in this Commonwealth shall be distinguishable from any name of record with the Secretary of State.*
- (2) *A business trust or foreign business trust may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records from one (1) or more of the names described in subsection (1) of this section. The Secretary of State shall authorize use of the name applied for if:*
- (a) *The other business entity 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 limited liability company; 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 Commonwealth.*
- (3) *A business trust or foreign business trust may use the name, including the fictitious name, 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 business trust or foreign business trust:*
- (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.*
- (5) *This chapter shall not control the use of assumed names.*
- (6) *The filing of a declaration of trust or an application to transact authority in the Commonwealth under the particular name of a business trust or foreign business trust shall not automatically prevent the use of that name or protect that name from use by other persons.*

SECTION 20. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *Each domestic business trust and each foreign business trust authorized to transact business in the Commonwealth 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 either:*
 - 1. *An individual who is a resident of this Commonwealth and whose business office is identical with the registered office;*
 - 2. *A domestic corporation, limited liability company, or not-for-profit corporation whose business office is identical with the registered office; or*
 - 3. *A foreign corporation, limited liability company, or not-for-profit 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 21. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *A business trust, or a foreign business trust authorized to transact business in the Commonwealth, 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 business trust or foreign business trust;*
 - (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, the registered agent shall change the street address of the registered office of any business trust or foreign business trust of which the registered agent is a registered agent by notifying the business trust or foreign business trust 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 business trust or foreign business trust 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 appointment pursuant to Section 20 of this Act.*

SECTION 22. A NEW SECTION OF KRS CHAPTER 386 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 business trust 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 23. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *A domestic or foreign business trust's registered agent shall be the business trust's agent for service of process, notice, or demand required or permitted by law to be served on the business trust.*
- (2) *If a domestic or foreign business trust has no registered agent in this Commonwealth, or the registered agent cannot with reasonable diligence be served, the business trust may be served by registered or certified mail, return receipt requested, addressed to the business trust at its principal office. Service shall be perfected under this subsection at the earliest of:*
 - (a) *The date the business trust receives the mail;*
 - (b) *The date shown on the return receipt, if signed on behalf of the business trust; 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) *This section shall not prescribe the only means, or necessarily the required means, of serving a domestic or foreign business trust.*

SECTION 24. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *Each domestic business trust, and each foreign business trust authorized to transact business in this Commonwealth, shall deliver to the Secretary of State for filing an annual report that sets forth:*
 - (a) *The name of the business trust and the state or country under whose law it is organized;*
 - (b) *The address of its registered office and the name of its registered agent at that office in this state;*
 - (c) *The address of its principal office; and*
 - (d) *The names and business addresses of its trustees.*
- (2) *Information in the annual report shall be current as of the date the annual report is executed on behalf of the business trust.*
- (3) *With respect to a business trust organized or a foreign business trust first qualifying to transact business on or after the effective date of this Act, 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 domestic business trust was organized or a foreign business trust was authorized to transact business. A business trust organized or a foreign business trust qualified to transact business on or before the effective date of this Act shall file its first annual report between January 1 and June 30, 2008. 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, the Secretary of State shall promptly notify the reporting domestic or foreign business trust in writing and return the report to it for correction.*
- (5) *A domestic or foreign business trust 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 such form as is provided by the Secretary of State.*
- (6) *The filing fee for an annual report or an amended annual report is fifteen dollars (\$15.00).*

SECTION 25. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State may commence a proceeding to administratively dissolve a business trust if:*
 - (a) *The business trust does not deliver its annual report to the Secretary of State within sixty (60) days after the annual report is due;*

- (b) *The business trust is without a registered agent or registered office in Kentucky for at least sixty (60) days; or*
- (c) *The business trust does not notify the Secretary of State within sixty (60) days after its registered agent or registered office has been changed, its registered agent has resigned, or its registered office has been discontinued.*
- (2) (a) *If the Secretary of State determines that one (1) or more grounds exist under subsection (1) of this section for dissolving a business trust, the Secretary of State shall serve the business trust with written notice of the determination.*
- (b) *If the business trust 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 notice was mailed, the Secretary of State shall administratively dissolve the business trust by signing a certificate of dissolution that states the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the business trust by mailing the notice by first class mail to the business trust at its registered office.*
- (3) (a) *A business trust administratively dissolved under subsection (2) of this section may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application shall:*
 - 1. *State the name of the business trust and the effective date of its administrative dissolution;*
 - 2. *State that the ground or grounds for dissolution either did not exist or have been eliminated;*
 - 3. *Contain a certificate from the Kentucky Department of Revenue stating that all taxes owed by the business trust have been paid; and*
 - 4. *Be accompanied by the reinstatement penalty and the current fee on filing each delinquent report.*
- (b) *If the Secretary of State determines that the application contains the information required by paragraph (a) of this subsection and that the information is correct, the Secretary of State shall:*
 - 1. *Cancel the certificate of dissolution and prepare a certificate of existence that states the determination and the effective date of existence; and*
 - 2. *Serve a copy on the business trust.*
- (c) *When the reinstatement is effective, the reinstatement shall relate back to and take effect as of the effective date of the administrative dissolution, and the business trust shall resume carrying on business as if the administrative dissolution had never occurred.*
- (4) (a) *If the Secretary of State denies a business trust's application for reinstatement following administrative dissolution, the Secretary of State shall serve the business trust with a written notice that explains the reason or reasons for denial by mailing notice by first-class mail to the business trust at its registered office or, if none, to the last principal office identified on the most recent annual report.*
- (b) *The business trust may appeal the denial of reinstatement to the Circuit Court of the county where the business trust's principal office, or, if there is none in Kentucky, its registered office in Kentucky, is located within thirty (30) days after service of the notice of denial by doing the following:*
 - 1. *Filing a petition with the court to set aside the dissolution; and*
 - 2. *Attaching to the petition a copy of the Secretary of State's certificate of dissolution, the business trust's application for reinstatement, and the Secretary of State's notice of denial.*
- (c) *The court may order the Secretary of State to reinstate the dissolved limited company or may take other action the court considers appropriate.*
- (d) *The court's final decision may be appealed as are other civil proceedings.*

SECTION 26. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) *Subject to the Constitution of this Commonwealth:*

- (a) *Except as provided in subsection (2) of this section, the laws of the state or other jurisdiction under which a foreign business trust is organized shall govern its organization and internal affairs, including the liability of its trustees and beneficial owners for the debts and obligations of the business trust and the inspection by a trustee or a beneficial owner of the books and records of the business trust; and*
 - (b) *A foreign business trust shall not be denied registration by reason of any difference between the laws of another jurisdiction under which a foreign business trust is organized and the laws of this Commonwealth.*
- (2) *A certificate of authority obtained pursuant to this chapter shall not authorize a foreign business trust to exercise any powers or engage in any business that a domestic business trust is forbidden to exercise or engage in by the laws of this Commonwealth.*

SECTION 27. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign business trust shall not transact business in this Commonwealth until it obtains a certificate of authority from the Secretary of State.*
- (2) *The following activities, among others, shall not constitute transacting business within the meaning of subsection (1) of this section:*
- (a) *Maintaining, defending, or settling any action, suit, or proceeding;*
 - (b) *Holding meetings of its members or managers or carrying on other activities concerning its internal affairs;*
 - (c) *Maintaining bank accounts;*
 - (d) *Maintaining offices or agencies for the transfer, exchange, and registration of the business trust's securities, or maintaining trustees or depositories with respect to those securities;*
 - (e) *Selling through independent contractors;*
 - (f) *Soliciting or obtaining orders, whether by mail, through employees or agents, or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;*
 - (g) *Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;*
 - (h) *Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;*
 - (i) *Owning, without more, real or personal property;*
 - (j) *Conducting an isolated transaction that is completed within thirty (30) days and that is not one (1) in the course of repeated transactions of a like nature; or*
 - (k) *Transacting business in interstate commerce.*
- (3) *The list of activities in subsection (2) of this section shall not be considered exhaustive. This section shall not apply in determining the contracts or activities that may subject a foreign business trust to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.*
- (4) *The term "transacting business" as used in this section shall have no effect on personal jurisdiction under KRS 454.210.*

SECTION 28. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign business trust transacting business in this Commonwealth without a certificate of authority shall not maintain an action, suit, or proceeding in any court in this Commonwealth until it obtains a certificate of authority.*
- (2) *The successor to a business trust that transacted business in this Commonwealth without a certificate of authority 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 business trust or its successor obtains a certificate of authority.*

- (3) *A court may stay a proceeding commenced by a foreign business trust, its successor, or assignee, until it determines whether the foreign business trust or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the business trust or its successor obtains the certificate of authority.*
- (4) *A foreign business trust 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 a certificate of authority. The Attorney General may collect all penalties due under this subsection.*
- (5) *Notwithstanding subsections (1) and (2) of this section, the failure of a foreign business trust to obtain a certificate of authority shall not impair the validity of any contract or act of the foreign business trust or prevent it from defending any proceeding in this Commonwealth.*

SECTION 29. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign business trust 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 set forth:*
 - (a) *The name of the foreign business trust, or if its name is unavailable for use in this Commonwealth, a name that satisfies the requirements of Section 19 of this Act;*
 - (b) *The name of the state or country under whose law it is organized;*
 - (c) *Its date of organization and, if the business trust has a specific date of dissolution, the latest date upon which it is to dissolve;*
 - (d) *The street address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign business trust;*
 - (e) *The address of its registered office in this Commonwealth and the name of its registered agent at that office;*
 - (f) *The names and usual business addresses of its current trustees; and*
 - (g) *A statement that, as of the date of filing, the foreign business trust validly exists as a business trust under the laws of the jurisdiction of its organization.*
- (2) *A written statement of the initial registered agent consenting to serve in that capacity shall accompany the application for a certificate of authority.*

SECTION 30. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign business trust authorized to transact business in this Commonwealth shall obtain an amended certificate of authority from the Secretary of State if it changes:*
 - (a) *Its name;*
 - (b) *The latest date on which it is to dissolve; or*
 - (c) *The state or country of its organization.*
- (2) *The requirements of Section 29 of this Act for obtaining an original certificate of authority shall apply to obtaining an amended certificate under this section.*

SECTION 31. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *A certificate of authority shall authorize the foreign business trust to which it is issued to transact business in this Commonwealth subject to the right of the Commonwealth to revoke the certificate as provided in this chapter.*
- (2) *A foreign business trust with a valid certificate of authority shall have the same but no greater rights as, and shall have the same but no greater privileges as, and except as otherwise provided by this chapter shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic business trust.*
- (3) *This chapter shall not authorize this Commonwealth to regulate the organization or internal affairs of a foreign business trust authorized to transact business in this Commonwealth.*

SECTION 32. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *If the name of a foreign business trust does not satisfy the requirements of Section 19_ of this Act, the foreign business trust, to obtain or maintain a certificate of authority to transact business in this Commonwealth may use a fictitious name to transact business in this Commonwealth if its real name is unavailable and it delivers to the Secretary of State for filing a certificate by a trustee that the business trust has adopted the fictitious name.*
- (2) *Except as authorized by subsections (3) and (4) of this section, the name, including a fictitious name, of a foreign business trust shall be distinguishable from the name of any other business entity upon the records of the Secretary of State.*
- (3) *A foreign business trust may apply to the Secretary of State for authorization to use in this Commonwealth the name of another business entity, organized or authorized to transact business in this Commonwealth, that is not distinguishable upon the Secretary's records from the name applied for. The Secretary of State shall authorize use of the name applied for if:*
 - (a) *The business entity 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 business trust; 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 Commonwealth.*
- (4) *A foreign business trust may use in this Commonwealth the name, including the fictitious name, of another business entity that is used in this Commonwealth if the business entity is organized or authorized to transact business in this Commonwealth and the foreign business trust:*
 - (a) *Has merged with the other business entity;*
 - (b) *Has been formed by reorganization of the business entity; or*
 - (c) *Has acquired all or substantially all of the assets, including the name, of the other business entity.*
- (5) *If a foreign business trust authorized to transact business in this Commonwealth changes its name to one that does not satisfy the requirements of this section, it shall not transact business in this Commonwealth under the changed name until it adopts a name satisfying the requirements of this section and obtains an amended certificate of authorization under Section 30 of this Act.*

SECTION 33. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

Each foreign business trust authorized to transact business in this Commonwealth shall continuously maintain in this Commonwealth:

- (1) *A registered office that may be the same as any of its places of business; and*
- (2) *A registered agent, who may be:*
 - (a) *An individual who resides in this Commonwealth and whose business office is identical with the registered office;*
 - (b) *A domestic corporation, not-for-profit corporation, or limited liability company whose business office is identical with the registered office; or*
 - (c) *A foreign corporation, not-for-profit corporation, or limited liability company authorized to transact business in this Commonwealth whose business office is identical with the registered office.*
- (3) *The registered agent shall execute and deliver to the Secretary of State a document accepting the agency appointment, and the appointment of the agent shall not be effective until delivered to the Secretary of State.*

SECTION 34. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign business trust authorized to transact business in this Commonwealth may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:*
 - (a) *Its name;*

- (b) *The street address of its current registered office;*
 - (c) *If the current registered office is to be changed, the street address of its new registered office;*
 - (d) *The name of its current registered agent;*
 - (e) *If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; 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 its business office, the agent shall change the street address of the registered office of any foreign business trust for which the agent is the registered agent by notifying the business trust in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the business trust has been notified of the change.*

SECTION 35. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *The registered agent of a foreign business trust may resign its agency appointment by signing and delivering to the Secretary of State for filing the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.*
- (2) *After filing the statement, the Secretary of State shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign business trust at its principal office address shown in its most recent annual report.*
- (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. A foreign business trust that fails to maintain a registered agent in this Commonwealth shall be subject to revocation of its certificate of authority under Section 38 of this Act.*

SECTION 36. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *The registered agent of a foreign business trust authorized to transact business in this Commonwealth shall be the company's agent for service of process, notice, or demand required or permitted by law to be served on the foreign business trust.*
- (2) *A foreign business trust may be served by registered or certified mail, return receipt requested, addressed to the appropriate representative of the foreign business trust at its principal office shown in its application for a certificate of authority or in its most recent annual report, if the foreign business trust:*
 - (a) *Has no registered agent or its registered agent cannot with reasonable diligence be served;*
 - (b) *Has withdrawn from transacting business in this Commonwealth under Section 37 of this Act; or*
 - (c) *Has had its certificate of authority revoked under Section 39 of this Act.*
- (3) *Service is perfected under subsection (2) of this section at the earliest of:*
 - (a) *The date the foreign business trust receives service by mail;*
 - (b) *The date shown on the return receipt, if signed on behalf of the foreign business trust; or*
 - (c) *Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.*
- (4) *This section shall not prescribe the only means, or necessarily the required means, of serving a foreign business trust.*

SECTION 37. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign business trust authorized to transact business in this Commonwealth shall not withdraw from this Commonwealth until it obtains a certificate of withdrawal from the Secretary of State.*

- (2) *A foreign business trust authorized to transact business in this Commonwealth may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application shall set forth:*
- (a) *The name of the foreign business trust and the name of the state or country under whose law it is organized;*
 - (b) *A statement that it is not transacting business in this Commonwealth and that it surrenders its authority to transact business in this Commonwealth;*
 - (c) *A statement that it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this Commonwealth;*
 - (d) *A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under paragraph (c) of subsection (2) or subsection (3) of this section; and*
 - (e) *A commitment to notify the Secretary of State in the future of any change in its mailing address.*
- (3) *After the withdrawal of the business trust is effective, service of process on the Secretary of State under this section shall be service on the foreign business trust. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign business trust at the mailing address set forth under subsection (2) of this section.*

SECTION 38. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

The Secretary of State may commence a proceeding under Section 39 of this Act to revoke the certificate of authority of a foreign business trust authorized to transact business in this Commonwealth if:

- (1) *The foreign business trust does not file its annual report to the Secretary of State within sixty (60) days after it is due;*
- (2) *The foreign business trust is without a registered agent or registered office in this Commonwealth for sixty (60) days or more;*
- (3) *The foreign business trust does not inform the Secretary of State under Sections 33 and 34 of this Act 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;*
- (4) *A trustee of the business trust or person organizing the foreign business trust signed a document the trustee or person knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or*
- (5) *The Secretary of State receives a duly-authenticated certificate from the Secretary of State or other official having custody of business trust records in the state or country under whose law the foreign business trust is organized stating that it has been dissolved or disappeared as the result of a merger or other event.*

SECTION 39. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *If the Secretary of State determines that one (1) or more grounds exist under Section 38 for revocation of a certificate of authority, the Secretary of State shall serve the foreign business trust with written notice of its determination by mailing the notice by first-class mail to the foreign business trust at its principal place of business address as shown on the records of the Secretary of State.*
- (2) *If the foreign business trust 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, the Secretary of State shall revoke the foreign business trust'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 to the foreign business trust by mailing notice by first-class mail to the foreign business trust at its principal place of business address as shown on the records of the Secretary of State.*
- (3) *The authority of a foreign business trust to transact business in this Commonwealth shall cease on the date shown on the certificate of revocation.*
- (4) *The Secretary of State's revocation of a foreign business trust's certificate of authority shall have the effect of appointing the Secretary of State as the foreign business trust's agent for service of process in any*

proceeding based on a cause of action which arose during the time the foreign business trust 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 business trust. Upon receipt of process, the Secretary of State shall mail a copy of the process to the appropriate representative of the foreign business trust at its principal office as shown in its most recent annual report or in any subsequent communication received from the foreign business trust stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

- (5) *Revocation of a foreign business trust's certificate of authority shall not terminate the authority of the registered agent of the foreign business trust.*

SECTION 40. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign business trust may appeal the Secretary of State's revocation of its certificate of authority to the Franklin Circuit Court within thirty (30) days after the service of certificate of revocation. The foreign business trust may petition the court to set aside the revocation by attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.*
- (2) *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.*
- (3) *The court's final decision may be appealed as in other civil proceedings.*

Section 41. KRS 14.105 is amended to read as follows:

- (1) The Secretary of State may accept electronic signatures to meet the filing requirements for a:
- (a) Corporation as required in KRS Chapter 271B;
 - (b) Nonprofit corporation as required in KRS Chapter 273;
 - (c) Professional service corporation as required in KRS Chapter 274;
 - (d) Limited liability company as required in KRS Chapter 275;~~and~~
 - (e) Partnership as required in KRS Chapter 362;
 - (f) *Partnership as required in subchapter 1 of KRS Chapter 362;*
 - (g) *Limited partnership as required in subchapter 2 of KRS Chapter 362;*
 - (h) *Cooperative corporations and associations as required in KRS Chapter 272;*
 - (i) *Business trust as required in KRS Chapter 386;*
 - (j) *Rural electric and rural telephone cooperative corporation as required in KRS Chapter 279; and*
 - (k) *Assumed name filing under KRS Chapter 365.*
- (2) The electronic signature shall satisfy the requirements set forth in KRS 369.101 to 369.120.

Section 42. 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 the greater of:
 - (a) 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:
 - 1. Include interest income derived from obligations of sister states and political subdivisions thereof; and
 - 2. Include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
 - (b) Adjusted gross income as defined in subsection (10) of this section and adjusted to 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;
 - (s) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner; and
 - (t) Exclude all income from all sources for active duty and reserve members and officers of the Armed Forces of the United States or National Guard who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred. For the purposes of this paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries;
- (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) For taxable years beginning after December 31, 2004, and before January 1, 2007, exclude the distributive share income or loss received from a corporation defined in subsection (24)(b) of this section whose income has been subject to the tax imposed by KRS 141.040. The exclusion provided in this paragraph shall also apply to a taxable year that begins prior to January 1, 2005, if the tax imposed by KRS 141.040 is paid on the distributive share income by a corporation defined in subparagraphs 2. to 8. of subsection (24)(b) of this section with a return filed for a period of less than twelve (12) months that begins on or after January 1, 2005, and ends on or before December 31, 2005. This paragraph shall not be used to delay payment of 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) (a) For taxable years beginning before January 1, 2005, and after December 31, 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code; and
 - (b) For taxable years beginning after December 31, 2004, and before January 1, 2007, "corporations" means:
 - 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
 - 2. S corporations as defined in Section 1361(a) of the Internal Revenue Code;
 - 3. A foreign limited liability company as defined in KRS 275.015~~[(6)]~~;
 - 4. A limited liability company as defined in KRS 275.015~~[(8)]~~;
 - 5. A professional limited liability company as defined in KRS 275.015~~[(18)]~~;
 - 6. A foreign limited partnership as defined in KRS 362.2-102(9);
 - 7. A limited partnership as defined in KRS 362.2-102(14);
 - 8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-101(7) or(8);
 - 9. A real estate investment trust as defined in Section 856 of the Internal Revenue Code;
 - 10. A regulated investment company as defined in Section 851 of the Internal Revenue Code;
 - 11. A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;

12. A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code; and
13. Other similar entities created with limited liability for their partners, members, or shareholders.

For purposes of this paragraph, "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. As used in this paragraph, "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 pass-through entity 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 deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; 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) "Pass-through entity" means any partnership, S corporation, limited liability company, limited liability partnership, limited partnership, or similar entity recognized by the laws of this state that is not taxed for federal purposes at the entity level, but instead passes to each partner, member, shareholder, or owner their proportionate share of income, deductions, gains, losses, credits, and any other similar attributes;
- (27) "S corporation" means "S corporation" as defined in Section 1361(a) of the Internal Revenue Code; and
- (28) "Limited liability pass-through entity" means any pass-through entity that affords any of its partners, members, shareholders, or owners, through function of the laws of this state or laws recognized by this state, protection from general liability for actions of the entity.

Section 43. 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 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;
 - (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, 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; 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 Office of Employment and Training within the Department of Workforce Investment in 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;
- (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 paragraph (a)1. and 2. 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 paragraph (a)1., 2., and 3. 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 paragraph (a)3. 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 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);
- (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;
- (23) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and
- (24) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.

Section 44. 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 KRS 154.22-010;
- (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) "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 (8)(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) "Assessment" means the job development assessment fee authorized by KRS 154.23-055;
- (5) "Authority" means the Kentucky Economic Development Finance Authority, as created in KRS 154.20-010;
- (6) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training within the Department of 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) "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) "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) "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) "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) "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) "Inducements" means the assessment and the income tax credits allowed to an approved company under KRS 154.23-050 and 154.23-055;
 - (14) "Local government" means a city, county, or urban-county government;
 - (15) "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) "Person" means an individual, sole proprietorship, partnership, limited 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 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) "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) "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) "Qualified zone" means any census tract or county certified as such by the authority in KRS 154.23-015 and 154.23-020;
 - (21) "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) "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) (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) "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;
- (25) "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;
- (26) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and
- (27) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.

Section 45. KRS 176.150 is amended to read as follows:

- (1) No applicant shall be given a certificate of eligibility unless his financial statement and the investigation made by the department show that he possesses net current assets or working capital sufficient in the judgment of the department to render it probable that he can satisfactorily execute his contracts and meet obligations therein incurred. All applications for certificates shall expressly authorize the department to obtain all information which it deems pertinent with respect to the financial status, assets, and liabilities of the applicant from any persons having business transactions with the applicant, and shall expressly authorize all those persons to furnish any information requested from them by the department.
- (2) No applicant shall be given a certificate of eligibility until the applicant provides the secretary of the Transportation Cabinet with his sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of a contract to the applicant will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.
- (3) Certificates of eligibility shall be issued without reference to the residence of applicants and the administrative regulations regarding the issuance of certificates shall apply equally to residents and nonresidents. A certificate of eligibility shall not be denied to any applicant upon the sole issue of nationality or residence.
- (4) When the applicant is a foreign corporation, ***limited liability company, or limited partnership***, the application shall be accompanied by a certificate from the Secretary of State ***of the jurisdiction in which it is organized certifying that it is validly existing and in good standing and a certificate from the Kentucky Secretary of***

State certifying that ~~it~~~~[such corporation]~~ is authorized to ***transact business in the Commonwealth of Kentucky***~~[do business in the state in which it is incorporated]~~.

Section 46. KRS 271B.1-200 is amended to read as follows:

- (1) A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.
- (2) This chapter must require or permit filing the document in the office of the Secretary of State.
- (3) The document shall contain the information required by this chapter. It may contain other information as well.
- (4) The document shall be typewritten, printed, or electronically transmitted. If the document is electronically transmitted, the document shall be in a format that can be retrieved or reproduced in typewritten or printed form.
- (5) The document shall be in the English language. A corporate name may be in a language other than English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations, if not in English, shall be accompanied by a reasonably authenticated English translation.
- (6) The document shall be executed:
 - (a) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;
 - (b) If directors have not been selected or the corporation has not been formed, by an incorporator; or
 - (c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.
- (7) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain:
 - (a) A corporate seal of the corporation;
 - (b) An attestation, acknowledgment, or verification; or
 - (c) A statement regarding the preparer of the document which complies with KRS 382.335.
- (8) If the Secretary of State has prescribed a mandatory form for the document under KRS 271B.1-210, the document shall be in or on the prescribed form.
- (9) The document shall be delivered to the office of 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 the document is filed in typewritten or printed form and not transmitted electronically, the Secretary of State may require one (1) exact or conformed copy to be delivered with the document, except as provided in KRS 271B.5-030 and 271B.15-090.
- (10) One (1) exact or conformed paper, but not electronic, copy of the document shall then be filed with and recorded by the county clerk of the county in which the registered office of the corporation is situated.
- (11) When the document is delivered to the office of the Secretary of State for filing, the correct filing fee, the organization tax, and any penalty required by this chapter or other law to be collected by the office of the Secretary of State with the document shall be paid or provision for payment shall be 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, charge card, or similar method. However, if the amount due is tendered by any method other than cash, the liability shall not be finally discharged until the Secretary of State receives final payment or credit of collectible funds.
- (12) ***Whenever a provision of KRS Chapter 271B permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:***
 - (a) ***The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document;***
 - (b) ***The facts may include, but are not limited to:***

1. *Any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;*
 2. *A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or*
 3. *The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.*
- (c) *As used in this subsection:*
1. *“Filed document” means a document filed with the Secretary of State under any provision of KRS Chapter 271B except Subtitle 15 or Section 74 of this Act; and*
 2. *“Plan” means a plan of nonprofit conversion as provided for in KRS 273.382, conversion into an LLC as provided for in Section 16 of this Act, merger, or of share exchange.*
- (d) *The following provisions of a plan or filed document shall not be made dependent on facts outside the plan or filed document:*
1. *The name and address of any person required in a filed document;*
 2. *The registered office of any entity required in a filed document;*
 3. *The registered agent of any entity required in a filed document;*
 4. *The number of authorized shares and designation of each class or series of shares;*
 5. *The effective date of a filed document; or*
 6. *Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.*
- (e) *If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in paragraph (b)1. of this subsection or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of State articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this paragraph are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.*

Section 47. KRS 271B.1-210 is amended to read as follows:

- (1) The Secretary of State may prescribe and furnish on request forms for:
 - (a) An application for a certificate of existence;
 - (b) A foreign corporation's application for a certificate of authority to transact business in this state;
 - (c) A foreign corporation's application for a certificate of withdrawal;
 - (d) A change of registered office or registered agent;~~{and}~~
 - (e) The annual report;
 - (f) *An amendment to the annual report;*
 - (g) *A change of principal address form; and*
 - (h) *An amended application for certificate of authority.*

If the Secretary of State so requires, use of these forms shall be mandatory.

- (2) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use shall not be mandatory.

Section 48. KRS 271B.1-220 is amended to read as follows:

- (1) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:
- | | | |
|---------------------|--|--------------|
| (a) | Articles of incorporation | \$ 40 |
| (b) | Application for use of indistinguishable name | \$ 20 |
| (c) | Application <i>or renewal of application</i> for reserved name | \$ 15 |
| (d) | <i>Cancellation of application for reserved name</i> | \$ 10 |
| (e) | Notice of transfer of reserved name | \$ 15 |
| (f)(e) | Application for registered name | \$ 36 |
| (g)(f) | Application for renewal of registered name | \$ 36 |
| (h)(g) | Corporation's statement of change of registered agent
or registered office, or both | \$ 10 |
| (i) | <i>Corporation's statement of change of principal office address</i> | \$ 10 |
| (j)(h) | Agent's statement of change of registered office for
each affected corporation | \$ 10 |
| | not to exceed a total of | \$1,000 |
| (k)(i) | Amendment of articles of incorporation | \$ 40 |
| (l)(j) | Restatement of articles of incorporation | \$ 40 |
| (m)(k) | Amended and restated articles | \$ 80 |
| (n)(l) | Articles of merger or share exchange | \$ 50 |
| (o)(m) | Articles of dissolution | \$ 40 |
| (p)(n) | Articles of revocation of dissolution | \$ 15 |
| (q)(o) | Reinstatement penalty following administrative dissolution | \$ 100 |
| (r)(p) | Application for certificate of authority | \$ 90 |
| (s)(q) | Application for amended certificate of authority | \$ 40 |
| (t)(r) | Application for certificate of withdrawal | \$ 40 |
| (u)(s) | Annual report | \$ 15 |
| (v) | <i>Amendment to annual report</i> | \$ 10 |
| (w)(t) | Articles of correction | \$ 20 |
| (x)(u) | Certificate of existence or authorization | \$ 10 |
| (y)(v) | Any other document required or permitted to
be filed by this chapter | \$ 15 |
| (z)(w) | Agent's statement of resignation | No fee |
| (aa)(x) | Certificate of administrative dissolution | No fee |
| (bb)(y) | Certificate of reinstatement | No fee |
| (cc)(z) | Certificate of judicial dissolution | No fee |
| (dd)(aa) | Certificate of revocation of authority to transact business | No fee |
- (2) The Secretary of State shall collect a fee of ten dollars (\$10) each time process is served on him under this chapter. The party to a proceeding causing service of process shall be entitled to recover this fee as costs if he prevails in the proceeding.

- (3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:
 - (a) ***Five dollars (\$5) per request for the first five (5) pages and*** fifty cents (\$0.50) a page for ***each page thereafter***~~[copying]~~; and
 - (b) Five dollars (\$5) for the certificate.
- (4) The county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to corporations.

Section 49. KRS 271B.1-250 is amended to read as follows:

- (1) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of KRS 271B.1-200, the Secretary of State shall file it.
- (2) The Secretary of State files a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in KRS 271B.5-030 and 271B.15-090, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.
- (3) If the Secretary of State refuses to file a document, ***if filed by paper, the Secretary of State***~~[he]~~ shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for ~~the~~~~[his]~~ refusal. ***If the document was filed electronically, the Secretary of State's brief explanation of the reason for the refusal may be returned electronically.***
- (4) The Secretary of State's duty to file documents under this section shall be ministerial. ~~The~~~~[His]~~ filing or refusal to file a document shall not:
 - (a) Affect the validity or invalidity of the document in whole or part;
 - (b) Relate to the correctness or incorrectness of information contained in the document; or
 - (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Section 50. KRS 271B.1-290 is amended to read as follows:

- (1) A person commits an offense ***by signing***~~[if he signs]~~ a document ***knowing it***~~[he knows]~~ is false in any material respect with intent that the document be delivered to the Secretary of State for filing.
- (2) An offense under this section shall be a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100).

Section 51. KRS 271B.1-400 is amended to read as follows:

In this chapter:

- (1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.
- (2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.
- (3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlining, shall be considered conspicuous.
- (4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.
- (5) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission.
- (6) "Distribution" means a direct or indirect transfer of money or other property (except its own shares) or inurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

- (7) "Effective date of notice" is defined in KRS 271B.1-410.
- (8) "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.
- (9) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee.
- (10) "Entity" includes *a domestic or foreign* corporation~~[-and foreign corporation]~~; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two (2) or more persons having a joint or common economic interest; and state, United States, and foreign government.
- (11) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.
- (12) "Governmental subdivision" includes authority, county, district, and municipality.
- (13) "Includes" denotes a partial definition.
- (14) "Individual" *means a natural person and* includes the estate of an incompetent or deceased individual.
- (15) "Means" denotes an exhaustive definition.
- (16) *"Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of an entity.*
- (17) "Notice" is defined in KRS 271B.1-410.
- ~~(18)(17)~~ "Person" includes individual and entity.
- ~~(19)(18)~~ "Principal office" means the office (in or out of this state) so designated in writing to the Secretary of State where the principal executive offices of a domestic or foreign corporation are located.
- ~~(20)(19)~~ "Proceeding" includes civil suit and criminal, administrative, and investigatory action.
- (21) *"Real name" shall have the meaning set forth in Section 164 of this Act.*
- ~~(22)(20)~~ "Record date" means the date established under Subtitle 6 or 7 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date, unless another time for doing so is specified when the record date is fixed.
- ~~(23)(21)~~ "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under subsection (3) of KRS 271B.8-400 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.
- ~~(24)(22)~~ "Share" means the unit into which the proprietary interests in a corporation are divided.
- ~~(25)(23)~~ "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
- ~~(26)(24)~~ "Sign" or "signature" includes any manual, facsimile, or conformed or electronic signature.
- ~~(27)(25)~~ "State" when referring to a part of the United States, includes a state and Commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.
- ~~(28)(26)~~ "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
- ~~(29)(27)~~ "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.
- ~~(30)(28)~~ "Voting group" means all shares of one (1) or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

Section 52. KRS 271B.1-410 is amended to read as follows:

- (1) Notice under this chapter shall be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.
- (2) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail, or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.
- (3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, shall be effective:
 - (a) Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders; or
 - (b) When electronically transmitted to the shareholder in a manner authorized and in accordance with the shareholder's instructions, if any.
- (4) Written notice to a domestic or foreign corporation (authorized to transact business in this state) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, ***in the case of a domestic corporation that has not yet delivered an annual report, in its articles of incorporation, or***, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.
- (5) Except as provided in subsections (3) and (4) of this section, written notice, if in a comprehensible form, shall be effective at the earliest of the following:
 - (a) When received;
 - (b) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed; or
 - (c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.
- (6) Oral notice shall be effective when communicated if communicated in a comprehensible manner.
- (7) If this chapter prescribes notice requirements for particular circumstances, those requirements, shall govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements shall govern.

Section 53. KRS 271B.2-030 is amended to read as follows:

- (1) Unless a delayed effective date is specified, the corporate existence shall begin when the articles of incorporation are filed by the Secretary of State.
- (2) The Secretary of State's filing of the articles of incorporation shall be conclusive proof that the incorporators satisfied all conditions precedent to incorporation, except in ***a proceeding***~~proceedings~~ by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Section 54. KRS 271B.2-050 is amended to read as follows:

- (1) After incorporation:
 - (a) If initial directors are named in the articles of incorporation, the initial directors shall hold an ***organizational***~~organization~~ meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;
 - (b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an ***organizational***~~organization~~ meeting at the call of a majority of the incorporators:
 1. To elect directors and complete the organization of the corporation; or
 2. To elect a board of directors who shall complete the organization of the corporation.

- (2) Action required or permitted by this chapter to be taken by incorporators at an **organizational**~~organization~~ meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written consents describing the action taken and signed by each incorporator.
- (3) An **organizational**~~organization~~ meeting may be held in or out of this state.

Section 55. KRS 271B.2-070 is amended to read as follows:

- (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:
 - (a) Procedures for calling a meeting of the **board of** directors;
 - (b) Quorum requirements for the meeting; and
 - (c) Designation of additional or substitute directors.
- (2) All provisions of the regular bylaws consistent with the emergency bylaws~~shall~~ remain effective during the emergency. The emergency bylaws **are**~~shall~~ not~~be~~ effective after the emergency ends.
- (3) Corporate action taken in good faith in accordance with the emergency bylaws:
 - (a) Shall bind the corporation; and
 - (b) Shall not be used to impose liability on a corporate director, officer, employee, or agent.
- (4) An emergency **exists**~~shall exist~~ for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Section 56. KRS 271B.3-010 is amended to read as follows:

- (1) Every corporation incorporated under this chapter **has**~~shall have~~ the purpose of engaging in any lawful business~~;~~ unless a more limited purpose is set forth in the articles of incorporation.
- (2) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

Section 57. 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 **any name of record with the Secretary of State**~~;~~
 - ~~(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 365.~~
- (3) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon **the Secretary of State's**~~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 ~~entity~~[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 ~~entity~~[domestic or foreign corporation] that is used in this state if the other ~~entity~~[corporation] is incorporated or authorized to transact business in this state and the proposed user corporation:
- (a) Has merged with the other ~~entity~~[corporation];
 - (b) Has been formed by reorganization of the other ~~entity~~[corporation]; or
 - (c) Has acquired all or substantially all of the assets, including the corporate name, of the other ~~entity~~[corporation].
- (5) This chapter does not control the use of ~~assumed~~[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 58. KRS 271B.4-020 is amended to read as follows:

- (1) A person may reserve the exclusive use of a corporate name, including a fictitious name, for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a ~~nonrenewable~~ one hundred twenty (120) day period. ***During the thirty (30) days prior to the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.***
- (2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.
- (3) ***The holder of a reserved corporate 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 59. KRS 271B.4-030 is amended to read as follows:

- (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by KRS 271B.15-060, if the name is distinguishable upon the records of the Secretary of State ***as required under subsection (2) of Section 57 of this Act***~~from the corporate names that are not available under subsection (2)(c) of KRS 271B.4-010~~.
- (2) A foreign corporation shall register its corporate name, or its corporate name with any addition required by KRS 271B.15-060, by delivering to the Secretary of State for filing an application:
 - (a) Setting forth its corporate name, or its corporate name with any addition required by KRS 271B.15-060, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and
 - (b) Accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation.
- (3) The name shall be registered for the applicant's exclusive use upon the effective date of the application.
- (4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (2) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed shall renew the registration for the following calendar year.

- (5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration shall terminate when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Section 60. KRS 271B.6-010 is amended to read as follows:

- (1) The articles of incorporation shall prescribe the classes of shares *and series of shares within a class*, and the number of shares of each class *and series* that the corporation is authorized to issue. If more than one (1) class *or series* of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class *or series*, and, prior to the issuance of shares of a class *or series*, the preferences, limitations, and relative rights of that class *or series* must be described in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by KRS 271B.6-020.
- (2) The articles of incorporation shall authorize:
 - (a) One (1) or more classes *or series* of shares that together have unlimited voting rights; and
 - (b) One (1) or more classes *or series* of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution.
- (3) The articles of incorporation may authorize one (1) or more classes *or series* of shares that:
 - (a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent *otherwise provided*~~prohibited~~ by this chapter;
 - (b) Are redeemable or convertible as specified in the articles of incorporation:
 1. At the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;
 2. For cash, indebtedness, securities, or other property; or
 3. In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;
 - (c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or
 - (d) Have preference over any other class *or series* of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.
- (4) *Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection (12) of Section 46 of this Act.*
- (5) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section shall not be considered exhaustive.

Section 61. KRS 271B.6-270 is amended to read as follows:

- (1) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction shall not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.
- (2) A restriction on the transfer or registration of transfer of shares shall be valid and enforceable against the holder, or a transferee of the holder, if the restriction is authorized by this section, and the holder or transferee has actual knowledge of the restriction or its existence is noted conspicuously on the front or back of the certificate, or is contained in the information statement required by subsection (2) of KRS 271B.6-260. Unless so noted *or contained*, a restriction is not enforceable against a person without knowledge of the restriction.
- (3) A restriction on the transfer or registration of transfer of shares shall be authorized:
 - (a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;
 - (b) To preserve exemptions under federal or state securities law;

- (c) In connection with shares issued by the corporation to its officers, directors, employees, or independent contractors, including as equity based compensation under the Internal Revenue Code; or
 - (d) For any other reasonable purpose.
- (4) A restriction on the transfer or registration of transfer of shares may without limitation:
- (a) Obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;
 - (b) Obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire or transfer the restricted shares;
 - (c) Obligate a shareholder to transfer the restricted shares to the corporation or other persons for an agreed price or a price based on a valuation formula, including an obligation to transfer the shares for an amount equal to the original consideration paid for the shares;
 - (d) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or
 - (e) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.
- (5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Section 62. KRS 271B.7-210 is amended to read as follows:

- (1) Except as provided in subsections (2) and (4) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, shall be entitled to one (1) vote on each matter voted on at a shareholders' meeting. Only shares shall be entitled to vote.
- (2) Absent special circumstances, the shares of a corporation shall not be entitled to vote if they are owned, directly or indirectly, by *an entity* ~~[a second corporation]~~, domestic or foreign, and the ~~[first]~~ corporation *controls* ~~[owns]~~, directly or indirectly, *the entity's determination to vote, and how to vote, the shares* ~~[a majority of the shares entitled to vote for directors of the second corporation]~~.
- (3) Subsection (2) of this section shall not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.
- (4) Redeemable shares shall not be entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

Section 63. KRS 271B.7-270 is amended to read as follows:

- (1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is provided for by this chapter.
- (2) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect *or proposed to be adopted, whichever is greater*.

Section 64. KRS 271B.7-400 is amended to read as follows:

- (1) A person shall not commence a proceeding in the right of a domestic or foreign corporation unless he was a shareholder of the corporation when the transaction complained of occurred or unless he became a shareholder through transfer by operation of law from one who was a shareholder at that time. The derivative proceeding shall not be maintained if it appears that the person commencing the proceeding does not fairly and adequately represent the interests of the shareholders in enforcing the right of the corporation.
- (2) A complaint in a proceeding brought in the right of a corporation shall be verified and allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why he did not make the demand. Whether or not a demand for action was made, if the corporation

commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

- (3) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected.
- (4) On termination of the proceeding the court may require the plaintiff to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.
- (5) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on his behalf.
- (6) ***In any derivative proceedings in the right of a foreign corporation, the matters covered by this section shall be governed by the laws of the jurisdiction of incorporation.***

Section 65. KRS 271B.8-220 is amended to read as follows:

- (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.
- (2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two (2) days' notice of the date, time, and place of the meeting. ***The notice need not***~~Unless otherwise provided by the articles of incorporation or bylaws, the notice shall not be required to~~ describe the purpose of the special meeting ***unless required by the articles of incorporation or bylaws.***

Section 66. KRS 271B.8-570 is amended to read as follows:

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee or agent of the corporation, is or was serving at the request of the corporation as a director, officer, ***manager***, partner, trustee, employee, or agent of another ***entity, or of an***~~foreign or domestic corporation, partnership, joint venture, trust,~~ employee benefit plan, or other enterprise, against liability asserted against or incurred ~~by him~~ in that capacity or arising from ~~the~~~~his~~ status as a director, officer, ***manager***, employee, or agent, whether or not the corporation would have power to indemnify ~~him~~ against the same liability under KRS 271B.8-510 or 271B.8-520.

Section 67. KRS 271B.13-020 is amended to read as follows:

- (1) A shareholder shall be entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:
 - (a) Consummation of a plan of merger to which the corporation is a party:
 1. If shareholder approval is required for the merger by KRS 271B.11-030 or the articles of incorporation and the shareholder is entitled to vote on the merger; or
 2. If the corporation is a subsidiary that is merged with its parent under KRS 271B.11-040;
 - (b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;
 - (c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale;
 - (d) ***Consummation of a plan of conversion of the corporation as provided for in Section 16 of this Act;***
 - (e) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:
 1. Alters or abolishes a preferential right of the shares to a distribution or in dissolution;

2. Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;
 3. Excludes or limits the right of the shares to vote on any matter other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or
 4. Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under KRS 271B.6-040;
 - ~~(f)(e)~~ Any transaction subject to the requirements of KRS 271B.12-210 or exempted by KRS 271B.12-220(2); or
 - ~~(g)(f)~~ Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.
- (2) A shareholder entitled to dissent and obtain payment for his shares under this chapter shall not challenge the corporate action creating his entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

Section 68. KRS 271B.14-050 is amended to read as follows:

- (1) A dissolved corporation shall continue its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
- (a) Collecting its assets;
 - (b) Disposing of its properties that will not be distributed in kind to its shareholders;
 - (c) Discharging or making provision for discharging its liabilities;
 - (d) Distributing its remaining property among its shareholders according to their interests; and
 - (e) Doing every other act necessary to wind up and liquidate its business and affairs.
- (2) Dissolution of a corporation shall not:
- (a) Transfer title to the corporation's property;
 - (b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
 - (c) Subject its directors or officers to standards of conduct different from those prescribed in Subtitle 8;
 - (d) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
 - (e) Prevent commencement of a proceeding by or against the corporation in its corporate name;
 - (f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution;
 - (g) Terminate the authority of the registered agent of the corporation; or
 - (h) Alter the obligations and responsibilities of the corporation as prescribed by applicable federal or state law with regard to the filing or examination of all federal and state tax returns or the payment, assessment, or collection of any federal or state tax due with respect to those returns; **or**
 - (i) Abate or suspend KRS 271B.6-220.**

Section 69. KRS 271B.14-210 is amended to read as follows:

- (1) If the Secretary of State determines that one (1) or more grounds exist under KRS 271B.14-200 for dissolving a corporation, he shall serve the corporation with written notice of his determination, by mailing such notice by first class mail to the corporation at its **principal place of business address** ~~registered office~~.
- (2) If the corporation 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, the Secretary of State shall administratively dissolve the corporation 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 of the certificate and serve a copy on the corporation by mailing such notice by first class mail to the corporation at its *principal place of business address*~~[registered office]~~.

- (3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under KRS 271B.14-050 and notify claimants under KRS 271B.14-060 and 271B.14-070.
- (4) The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

Section 70. KRS 271B.14-220 is amended to read as follows:

- (1) A corporation administratively dissolved under KRS 271B.14-210, or revoked under the provisions of KRS 271A.615, which was repealed by 1988 Ky. Acts, ch. 23, sec. 248, may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution or revocation. The application shall:
 - (a) Recite the name of the corporation and the effective date of its administrative dissolution or revocation;
 - (b) State that the ground or grounds for dissolution or revocation either did not exist or have been eliminated;
 - (c) State that the corporation's name satisfies the requirements of KRS 271B.4-010;
 - (d) Contain a certificate from the Department of Revenue reciting that all taxes owed by the corporation have been paid; and
 - (e) Be accompanied by the reinstatement penalty and the current fee for filing each delinquent annual report provided for in KRS 271B.1-220.
- (2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, he shall cancel the certificate of dissolution or revocation and prepare a certificate of existence that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation by mailing the notice by first class mail to the corporation at its registered office.
- (3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution or revocation and the corporation 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 corporation which was administratively dissolved or revoked and has taken the action necessary to wind up and liquidate its business and affairs under KRS 271B.14-050, and notify claimants under KRS 271B.14-060 and 271B.14-070, shall be prohibited from reinstatement.
- (5) *A corporation administratively dissolved upon the expiration of its period of duration may, in the sixty (60) day period of subsection (2) of Section 69 of this Act, amend its articles to extend its period of duration or to delete its period of duration, which amendment will relate back to the day immediately preceding the expiration of the period of duration. A corporation which fails to so amend its articles of incorporation in the sixty (60) day period of subsection (2) of Section 69 of this Act may not thereafter be reinstated, and shall liquidate its business and affairs under Section 68 of this Act and notify claimants under KRS 271B.14-060 and 271B.14-070.*

Section 71. KRS 271B.15-010 is amended to read as follows:

- (1) A foreign corporation, except a foreign insurance company, shall not transact business in this state until it obtains a certificate of authority from the Secretary of State.
- (2) The following activities, among others, shall not constitute transacting business within the meaning of subsection (1) of this section:
 - (a) Maintaining, defending, or settling any proceeding;
 - (b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

- (c) Maintaining bank accounts;
 - (d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries 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 state before they become contracts;
 - (g) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;
 - (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
 - (i) Owning, without more, real or personal property;
 - (j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature; and
 - (k) Transacting business in interstate commerce.
- (3) The list of activities in subsection (2) of this section is not exhaustive.
- (4) ***This section shall not apply in determining the contracts or activities that may subject a foreign corporation to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.***

Section 72. KRS 271B.15-050 is amended to read as follows:

- (1) A certificate of authority shall authorize the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.
- (2) A foreign corporation with a valid certificate of authority shall have the same but no greater rights and shall have the same but no greater privileges as, and except as otherwise provided by this chapter shall be subject to the same duties, restrictions, penalties and liabilities now or later imposed on, a domestic corporation of like character.
- (3) This chapter shall not authorize this state to regulate the organization or internal affairs, ***including the inspection of corporate books, records, and documents,*** of a foreign corporation authorized to transact business in this state.

Section 73. KRS 271B.15-060 is amended to read as follows:

- (1) If the ~~real~~~~[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 ~~real~~~~[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 ~~real or fictitious~~~~[corporate]~~ name ~~{(including a fictitious name)}~~ of a foreign corporation shall be distinguishable upon the records of the Secretary of State from ***any name of record with the Secretary of State***:
 - ~~(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 365}.~~

- (3) A foreign corporation may apply to the Secretary of State for authorization to use in this state ~~a name~~~~[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 ~~entity~~~~[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 ~~entity~~~~[corporation]~~ that is used in this state if the other ~~entity~~~~[corporation]~~ is incorporated or authorized to transact business in this state and the foreign ~~entity~~~~[corporation]~~:
- (a) Has merged with the other ~~entity~~~~[corporation]~~;
 - (b) Has been formed by reorganization of the other ~~entity~~~~[corporation]~~; or
 - (c) Has acquired all or substantially all of the assets, including the corporate name, of the other ~~entity~~~~[corporation]~~.
- (5) If a foreign corporation authorized to transact business in this state changes its ~~real~~~~[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 *fictitious* name satisfying the requirements of KRS 271B.4-010 and obtains an amended certificate of authority under KRS 271B.15-040.

Section 74. KRS 271B.16-220 is amended to read as follows:

- (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State for filing an annual report that sets forth:
 - (a) The name of the corporation and the state or country under whose law it is incorporated;
 - (b) The address of its registered office and the name of its registered agent at that office in this state;
 - (c) The address of its principal office; and
 - (d) The names and business addresses of its directors and principal officers;
- (2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.
- (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 domestic corporation was incorporated or a foreign corporation was authorized to transact business. 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, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. *For purposes of KRS 271B.1-280(2)(d), an annual report returned for correction shall not be deemed to have been delivered until it is returned and accepted by the Secretary of State.*
- (5) *A domestic or foreign corporation 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 such form as is provided by the Secretary of State.*

Section 75. KRS 272.010 is amended to read as follows:

- (1) As used in KRS 272.020 to 272.050:
 - (a) "Cooperative corporation" means a business concern that distributes the net profit of its business by first paying a fixed dividend upon its stock, if any, and then prorating the remainder of its profits as patronage refunds to its stockholders, members or customers, as provided in bylaws;
 - (b) "Patronage refund" means the portion of net profit returned to member patrons or to all patrons in proportion to their patronage. In the case of an employee cooperative in which only employees are

voting members, "patronage" means the amount or value of work performed by an employee, as provided in bylaws;

- (c) "Stockholder" means the holder of voting stock in a cooperative corporation organized with shares;
 - (d) "Member" means the holder of a membership in a cooperative corporation organized with memberships;
 - (e) "Membership" means a lifetime payment made to a cooperative corporation to secure or provide services, not made in expectation of dividend or profit, and without any redemption value except at time of dissolution. The articles of incorporation or bylaws may specify the conditions under which a membership may be terminated;~~and~~
 - (f) "Nonprofit basis" means that no part of the income or profit of the cooperative corporation is distributable to its members, directors or officers except in the form of patronage refunds;
 - (g) **"Entity" includes a domestic or foreign corporation and corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business or statutory trust; estate; partnership; limited partnership; limited liability company; trust; two (2) or more persons having a joint or common economic interest; and a state, United States, and foreign government;**
 - (h) **"Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity; and**
 - (i) **"Real name" shall have the meaning set forth in Section 164 of this Act.**
- (2) As used in KRS 272.360 to 272.510, unless the content for such requires otherwise, the term:
- (a) "Livestock" shall mean sheep, cattle, hogs, horses, jacks, mules, poultry or any other animal or bird commonly kept on the farm;
 - (b) "Farmer" shall mean any individual, firm, partnership, **limited partnership, limited liability company,** corporation or farm management group which derives a portion or all of its income from the production of live stock domiciled on a farm within the Commonwealth;
 - (c) "Member" shall include actual members of the association organized under KRS 272.360 to 272.510;
 - (d) "Association" means any corporation organized under KRS 272.360 to 272.510; and
 - (e) "Department" shall mean the Department of Agriculture.
- (3) Associations organized under KRS 272.360 to 272.510 shall be termed nonprofit inasmuch as they are not organized to make profit for themselves.

Section 76. KRS 272.050 is amended to read as follows:

No corporation, **partnership, limited partnership, limited liability company, or other entity**~~association or company~~ doing business for profit in this state shall use the title "cooperative" as any part of its name unless it has complied with the provisions of KRS 272.020 to 272.050.

Section 77. KRS 272.131 is amended to read as follows:

- (1) The articles of incorporation of each association shall state:
- (a) The name of the association;
 - (b) The purposes for which it is formed;
 - (c) The place where its principal business will be transacted;
 - (d) The period of duration, which may be perpetual. When the articles of incorporation fail to state the period of duration, it shall be considered perpetual. Any association heretofore or hereafter organized for a period less than perpetual, may, by amendment to its articles of incorporation, extend the period of its duration for a specified period or perpetually;
 - (e) The names and addresses (not less than five (5)) of those who are to serve as directors for the first term or until the election of their successors;

- (f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rules applicable to all members by which the property rights and interests, respectively, of each member shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members in accordance with the general rules. These provisions of the articles of incorporation shall not be altered, amended, or repealed except by the affirmative vote of not less than two-thirds (2/3) of the votes entitled to be cast by members present in person, or by proxy (if permitted by the bylaws), and voting thereon at any regular or special meeting; and
 - (g) If organized with capital stock, the authorized amount of the stock and the number of shares into which it is divided and the par value thereof. Capital stock may be divided into preferred and common stock. The articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and the privileges granted to each. No specific amount of the capital stock authorized is required to be subscribed before the association may transact business with other than its members; the board may determine the amount of capital stock to be issued as the business of the association may justify or demand, from time to time, within the amount of the total authorization.
- (2) The articles of incorporation may contain any provision consistent with law with respect to management, regulation, government, financing, indebtedness, membership, the establishment of voting districts and the election of delegates for representative purposes, the issuance, retirement and transfer of its stock, if formed with capital stock, or any provisions relative to the way or manner in which it shall operate with respect to its members, officers, or directors, and any other provisions relating to its affairs; but nothing set forth in this section shall be construed as limiting any of the rights or powers otherwise given to such associations.
 - (3) The articles of incorporation must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the laws of this state to take and certify acknowledgments of deeds and conveyances; and shall be filed and recorded in accordance with the statute relating to corporations generally; and when so filed, the articles of incorporation, or certified copies thereof, shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of the association. A copy of the articles of incorporation, indorsed by the secretary of state with the fact and time of recording in his office, shall be filed with the dean of the College of Agriculture of the University of Kentucky and with the Commissioner of the Department of Agriculture.
 - (4) *Except as authorized by subsections (5) and (6) of this section, the name of an association shall be distinguishable from any name of record with the Secretary of State.*
 - (5) *An association may apply to the Secretary of State for authorization to use a name that is not distinguishable from a name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:*
 - (a) *The other entity 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.*
 - (6) *An association may use the name, including the fictitious name, of another entity that is used in this state if the other entity is incorporated, organized, or authorized to transact business in this state and the proposed user association:*
 - (a) *Has merged with the other entity;*
 - (b) *Has been formed by reorganization of the other entity; or*
 - (c) *Has acquired all or substantially all of the assets, including the name, of the other entity.*
 - (7) *This chapter does not control the use of assumed names.*
 - (8) *The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.*

Section 78. KRS 272.390 is amended to read as follows:

Each association formed under KRS 272.360 to 272.510 must prepare and file articles of incorporation, setting forth:

- (1) The name of the association.
- (2) The place where its principal business will be transacted.
- (3) The term for which it is to exist; the number of directors thereof which must not be less than five (5) and may be any number in excess thereof; the term of office of such directors; and the names and addresses of those who are to serve as incorporating directors for the first term, or until election and qualification of their successors.
- (4) The property rights of the members and whether the interest of each member will be equal or unequal; and if unequal, the rule or rules applicable to all members by which the property rights and interests, respectively, of each member shall be determined and fixed; and provision for the admission of new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.
- (5) *Except as authorized by subsections (6) and (7) of this section, the name of an association must be distinguishable from any name of record with the Secretary of State.*
- (6) *An association may apply to the Secretary of State for authorization to use a name that is not distinguishable from any name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:*
 - (a) *The other entity 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 association; 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.*
- (7) *An association may use the name, including the fictitious name, of another entity that is used in this state if the other entity is incorporated, organized, or authorized to transact business in this state and the proposed user association:*
 - (a) *Has merged with the other entity;*
 - (b) *Has been formed by reorganization of the other entity; or*
 - (c) *Has acquired all or substantially all of the assets, including the name, of the other entity.*
- (8) *This chapter does not control the use of assumed names.*
- (9) *The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.*

Section 79. KRS 273.161 is amended to read as follows:

As used in KRS 273.163 to 273.387, unless the context otherwise requires, the term:

- (1) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of KRS 273.163 to 273.387, except a foreign corporation;
- (2) "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state;
- (3) "Nonprofit corporation" means a corporation no part of the income or profit of which is distributable to its members, directors or officers;
- (4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger;
- (5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated;
- (6) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws;

- (7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which group is designated;
- (8) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs;
- (9) "Principal office" means the office (in or out of this state) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located;
- (10) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility for custody of the minutes of the meetings of the board of directors and the members and for authenticating records of the corporation;
- (11) "Individual" includes the estate of an incompetent or deceased individual;
- (12) "Entity" includes *a domestic or foreign* corporation ~~and foreign corporation~~; not-for-profit corporation; profit and not-for-profit unincorporated association; business *or statutory* trust, estate, partnership, *limited partnership, limited liability company*, trust, and two (2) or more persons having a joint or common economic interest; and state, United States, and foreign government; and
- (13) "Person" includes individual and entity.
- (14) ***"Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of an entity; and***
- (15) ***"Real name" shall have the meaning set forth in Section 164 of this Act.***

Section 80. 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 ***any name of record with the Secretary of State***:
 - ~~(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 365.~~
- (3) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable ***from a name of record with the Secretary of State*** ~~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 *entity*~~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 ***assumed***~~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 81. KRS 273.178 is amended to read as follows:

- (1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a nonrenewable period of one hundred twenty (120) days. ***Within thirty (30) days of the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.***
- (2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.
- (3) ***The holder of a reserved corporate 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 82. KRS 273.179 is amended to read as follows:

- (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by KRS 273.364, if the name is distinguishable upon the records of the Secretary of State ***as required by subsection (2) of Section 80 of this Act***~~from the corporate names that are not available under KRS 273.177~~.
- (2) A foreign corporation shall register its corporate name, or its corporate name with any addition required by KRS 273.364, by delivering to the Secretary of State for filing an application:
 - (a) Setting forth its corporate name, or its corporate name with any addition required by KRS 273.364, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and
 - (b) Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.
- (3) The name shall be registered for the applicant's exclusive use upon the effective date of the application.
- (4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (2) of this section, between October 1 and December 31 of the preceding year. The renewal application, when filed, shall renew the registration for the following calendar year.
- (5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration shall terminate when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Section 83. 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 ***any name of record with the Secretary of State***~~;~~
- ~~(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 365].~~
- (3) A foreign corporation may apply~~[to the Secretary of State]~~ for authorization to use in this state ***a***~~[the]~~ name~~[of another corporation, incorporated or authorized to transact business in this state,]~~ that is not distinguishable upon ~~the~~~~[his]~~ records ***of the Secretary of State*** from the name applied for. The Secretary of State shall authorize use of the name applied for if:
- (a) The other ***entity***~~[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 84. KRS 273.2521 is amended to read as follows:

- (1) The Secretary of State may prescribe and furnish on request forms for:
- (a) A certificate of existence;
 - (b) A foreign corporation's application for a certificate of authority to transact business in this state;
 - (c) A foreign corporation's application for a certificate of withdrawal;
 - (d) A change of registered office or registered agent;
 - (e) ***A change of the principle office address;***
 - (f) ***Application for a reservation of name;***
 - (g) ***Application to renew a reservation of a name;***
 - (h) The annual report; ***and***
 - (i) ***An amendment of the annual report.***

If the Secretary of State so requires, use of these forms shall be mandatory.

- (2) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter. Use of these forms shall not be mandatory.

Section 85. KRS 273.3671 is amended to read as follows:

- (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State for filing an annual report that sets forth:
- (a) The name of the corporation and the state or country under whose law it is incorporated;
 - (b) The address of its registered office and the name of its registered agent at that office in this state;
 - (c) The address of its principal office; and

- (d) The names and business addresses of its directors and principal officers.
- (2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.
 - (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 domestic corporation was incorporated or a foreign corporation was authorized to transact business. 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, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. *For purposes of KRS 273.2527(2)(d), an annual report returned for correction shall not be deemed to have been delivered until it is returned to and accepted by the Secretary of State.*
 - (5) *A domestic or foreign corporation 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 such form as is provided by the Secretary of State.*

Section 86. KRS 274.005 is amended to read as follows:

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

- (1) "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) "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) "Professional service corporation" means a corporation organized under this chapter;
- (4) "Qualified person" means a natural person, ~~general~~ partnership, limited liability company, ~~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 87. KRS 274.015 is amended to read as follows:

- (1) One (1) or more individuals, each of whom is licensed to render the same professional service or who are licensed to render related professional services such that applicable licensing laws and regulations would not prohibit the practice of such multiple professional services through a single business partnership, may incorporate and form a professional service corporation by filing articles of incorporation in the office of the Secretary of State. Such articles of incorporation shall meet the requirements of KRS Chapter 271B, and in addition to the information required by KRS 271B.2-020, such articles shall contain the following:
 - (a) The designation of the profession or professions to be practiced through the professional service corporation.
 - (b) The names and residence addresses of all the original shareholders of the professional service corporation.
 - (c) A statement by the incorporator or incorporators that each of the incorporators, shareholders, not less than one half (1/2) of the directors, and each of the officers other than secretary and treasurer is a qualified person within the meaning of this chapter.
- (2) ~~Any~~ professional service corporation formed under the provisions of this chapter ~~shall~~, except as this chapter may otherwise provide, **shall** have the same powers, authority, duties and ~~liabilities~~ **liability** as ~~a corporation~~ **a corporation** formed under KRS Chapter 271B.

Section 88. 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, *domestic or foreign*, 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 ~~the laws of 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 the articles of incorporation of the corporation*; 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 89. KRS 274.019 is amended to read as follows:

No proxy for shares of a professional service corporation shall be valid unless it shall be given to a qualified person. A voting trust with respect to shares of a professional *service* corporation shall not be valid unless all the trustees and beneficiaries thereof are qualified persons, except that a voting trust may be validly continued for a period of ten (10) months after the death of a deceased beneficiary or for a period of five (5) months after a beneficiary has become a disqualified person.

Section 90. KRS 274.065 is amended to read as follows:

Nothing in this chapter shall restrict or limit in any manner the authority and duty of any *regulating* board of competent jurisdiction (a) to license individual persons rendering professional services, or (b) to regulate the practice of the profession which is within the jurisdiction of such regulating board, even though such person is an officer, director, shareholder or employee of a professional service corporation or engages in the practice of such profession through a professional service corporation.

Section 91. KRS 274.077 is amended to read as follows:

The name of a domestic professional service corporation or of a foreign professional service corporation authorized to transact business in this state:

- (1) Shall contain the words "professional service corporation" or the abbreviation "P.S.C.";
- (2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than the purposes contained in its articles of incorporation;
- (3) Shall *satisfy the requirements of subsection (2) of Section 57 of this Act* ~~be distinguishable upon the records of the Secretary of State from the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in KRS Chapter 271B, or the name of a corporation which has in effect a registration of its corporate name as provided in KRS Chapter 271B, or the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable, or a name filed with the Secretary of State under KRS 362.095, 362.420, or 365.015, except that this provision shall not apply if:~~
 - (a) ~~Such similarity results from the use in the corporate name of personal names of its shareholders or former shareholders or of natural persons who were associated with a predecessor entity;~~
 - (b) ~~The other corporation or partnership 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~~
 - (c) ~~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]; and~~

- (4) Shall otherwise conform to any rule promulgated by a **regulating board**~~[licensing authority]~~ having jurisdiction of a professional service described in the articles of incorporation of such corporation.

Section 92. KRS 275.010 is amended to read as follows:

- (1) Except as otherwise set forth in this chapter or unless the articles of organization or operating agreement provide otherwise, every limited liability company shall have the powers to do all things necessary or convenient to carry out its business and affairs.
- (2) ***A limited liability company is a legal entity distinct from its members.***
- (3) Professional limited liability companies shall be governed by the laws, whether statutory or common law, applicable to other limited liability companies. Except for those provisions concerning the personal liability of members, managers, employees, and agents of a limited liability company, nothing in this chapter shall restrict, limit, or expand in any manner the authority and duty of any regulating board to:
- (a)~~1~~ License individual persons providing professional services; and
- (b)~~2~~ Regulate the practice of persons providing professional services which are within the jurisdiction of the regulating board, even though the persons are members, managers, employees, or agents of a professional limited liability company, or provide professional services through a professional limited liability company, including the establishment of regulations concerning:
- 1.~~(a)~~ The qualifications of members or managers of a professional limited liability company;
 - 2.~~(b)~~ The transfer of limited liability company interests in a professional limited liability company; or
 - 3.~~(c)~~ The provision of one (1) or more professional services through a professional limited liability company.

Section 93. 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 ***a domestic ~~or~~ foreign limited liability company, corporation, partnership, limited partnership***~~[companies, general and limited partnerships, corporations]~~, business ***or statutory trust***~~[trusts]~~, and ***not-for-profit unincorporated association***~~[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) ***"Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;***
- (6) ***"Dissent" means a right to object to a proposed action or transaction and, in connection therewith, to demand a redemption of a limited liability company interest;***
- (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) "Event of disassociation" means an event that causes a person to cease to be a member as provided in KRS 275.280;
- (9)~~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;

- (10)~~(7)~~ "Knowledge" means actual knowledge of a fact;
- (11)~~(8)~~ "Limited liability company" or "domestic limited liability company" means a limited liability company formed under this chapter having one (1) or more members;
- (12)~~(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;
- (13)~~(10)~~ "Limited partnership" means a limited partnership formed under the laws of the Commonwealth or any other state or a foreign country;
- (14)~~(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);
- (15)~~(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;
- (16)~~(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;
- (17) *"Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity;*
- (18) *"Nonprofit limited liability company" means a limited liability company formed for a nonprofit purpose;*
- (19) *"Nonprofit purpose" includes any purpose authorized under KRS 273.167;*
- (20)~~(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;
- (21)~~(15)~~ "Person" means an individual, a partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal entity;
- (22)~~(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;
- (23)~~(17)~~ "Proceeding" means civil suit and criminal, administrative, and investigative action;
- (24)~~(18)~~ "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;
- (25)~~(19)~~ "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;
- (26) *"Real name" shall have the meaning set forth in Section 164 of this Act;*

(27)~~(20)~~ "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

(28)~~(21)~~ "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Section 94. KRS 275.020 is amended to read as follows:

- (1) One (1) or more persons may serve as the organizer and form a limited liability company by delivering articles of organization to the Secretary of State for filing. It shall not be necessary that the person or persons be members of the limited liability company.
- (2) *Unless a delayed effective date is specified, the existence of the limited liability company shall begin when the articles of organization are filed by the Secretary of State. If a delayed effective date is specified, the existence of the limited liability company shall begin when the articles of organization are effective as specified in Section 100 of this Act.*
- (3) *The Secretary of State's filing of the articles of organization shall be conclusive proof that the organizer or organizers satisfied all conditions precedent to organization, except in a proceeding by the state to cancel or revoke the organization or involuntarily dissolve the limited liability company.*

Section 95. KRS 275.025 is amended to read as follows:

- (1) The articles of organization shall set forth:
 - (a) A name for the limited liability company that satisfies the requirements of KRS 275.100;
 - (b) The street address of the limited liability company's initial registered office, and the name of its initial registered agent at that office;
 - (c) The mailing address of the initial principal office of the limited liability company; and
 - (d) A statement that the limited liability company is to be managed by a manager or managers or that the limited liability company is to be managed by its members.
- (2) The term of a limited liability company shall be perpetual unless a period of duration other than perpetual is set forth in the articles of organization.
- (3) The articles of organization of a professional limited liability company shall designate the professional services to be practiced through the professional limited liability company.
- (4) The articles of organization may set forth any other matter that under this chapter is permitted to be set forth in an operating agreement not inconsistent with law.
- (5) A written statement of the initial registered agent consenting to serve in that capacity shall accompany the articles of organization.
- (6) A member of a limited liability company shall not have a vested property right resulting from any provision of the articles of organization.
- (7) *If the limited liability company is a nonprofit limited liability company, then the articles of organization shall state that fact and its nonprofit purpose. This provision of the articles of organization shall not be removed from the articles of organization without written notice to the Attorney General of Kentucky given not less than ten (10) business days prior to the filing of the amendment.*
- (8) *The fact that the articles of organization are on file with the Secretary of State is notice:*
 - (a) *That the limited liability company formed by the filing of the articles of organization is a limited liability company formed under the laws of the Commonwealth of Kentucky; and*
 - (b) *Of all other facts set forth in the articles of organization which are required to be set forth by subsections (1), (3), and (7) of this section.*

Section 96. KRS 275.030 is amended to read as follows:

- (1) A limited liability company ~~shall may~~ amend its articles of organization to add **or change a provision that is required by this chapter to be included in the articles of organization.** A limited liability company may

amend its articles of organization to add, change, or delete a provision that is ~~required or~~ permitted ***to be or that is not required to be*** in the articles of organization ~~or to delete a provision not required in the articles~~. The articles of organization shall be amended if:

- (a) There is a change in the name of the limited liability company;
 - (b) There is a change in the latest date upon which the limited liability company is to dissolve;
 - (c) There is a change in whether the management of the limited liability company is vested in managers or members; or
 - (d) There is a change in any other matter ***required to be*** set forth in the articles of organization under KRS 275.025.
- (2) Except as provided in subsection (3) of this section, or unless the articles of organization or the operating agreement provide otherwise, an amendment to the articles of organization of a limited liability company shall be approved by the members in accordance with KRS 275.175.
- (3) Unless the articles of organization or the ***written*** operating agreement provide otherwise, a manager or, if there is no manager, any member may amend the articles of organization of the limited liability company without action by the members to delete:
- (a) The name and address of the initial registered agent or initial registered office if a statement of change pursuant to KRS 275.120 is on file with the Secretary of State; or
 - (b) The mailing address of the initial principal office, if a statement of change pursuant to KRS 275.040 is on file with the Secretary of State.
- (4) To amend its articles of organization, a limited liability company shall file with the Secretary of State articles of amendment setting forth:
- (a) The name of the limited liability company;
 - (b) The text of each amendment adopted;
 - (c) The date of each amendment's adoption; and
 - (d) A statement that the amendment was duly adopted by the managers or the members in accordance with the articles of organization, the operating agreement of the limited liability company, or this chapter.
- (5) The articles of organization may be amended in any respect as may be desired, if the articles of organization as amended contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.
- (6) ***Unless the articles of organization provide otherwise, no member of a limited liability company shall have the right to dissent from an amendment to the articles of organization.***

Section 97. KRS 275.045 is amended to read as follows:

- (1) A document shall satisfy the requirements of this section, and of any other section of this chapter that adds to or varies these requirements, to be entitled to filing by the Secretary of State.
- (2) This chapter shall require or permit filing the document in the Office of the Secretary of State.
- (3) The document shall contain the information required by this chapter. It may also contain other information.
- (4) The document 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 documents may be filed.
- (5) The document shall be in the English language. A limited liability company name may be in a language other than English if written in English letters or Arabic or Roman numerals. Any document that may be filed by a foreign limited liability company which 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) Unless otherwise provided in any other section of this chapter, any document required by this chapter to be filed with the Secretary of State shall be executed:

- (a) If management of the limited liability company is vested in one (1) or more managers, by any one (1) of the managers;
 - (b) If management of the limited liability company is reserved to the members, by any one (1) of the members;
 - (c) If the limited liability company has not been formed, by the persons forming a limited liability company; or
 - (d) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.
- (7) The persons executing the document shall sign it and state beneath or opposite their signatures the names of the persons and the capacity in which each signs.
 - (8) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document shall not be required to be provided to or filed with the Secretary of State.
 - (9) If the Secretary of State has prescribed a mandatory form for a document, **then** the document shall be in or on the prescribed form.
 - (10) The document shall be delivered to the Secretary of State for filing ~~and shall be accompanied by two (2) exact or conformed copies, the correct filing fee, and any other fee or penalty required by this chapter or other law to be collected by the Office of 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 that it be accompanied by two (2) exact or conformed copies.***
 - (11) One (1) of the exact or conformed copies ***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 liability company is situated.
 - (12) ***When the document is delivered to the office of the Secretary of State for filing, the correct filing fee and any penalty required by this chapter or other law to be collected by the office of the Secretary of State 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 98. KRS 275.050 is amended to read as follows:

- (1) The Secretary of State shall 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 principal office address;
 - (f) The annual report; ~~and~~
 - (g) ***An amendment of the annual report;***
 - (h) ***An application for a reservation of name;***
 - (i) ***An application to renew a reservation of name; and***
 - (j) ***An amended application for certificate of authority.***
- (2) The Secretary of State shall have the discretion to make mandatory the use of the forms referred to in subsection (1) of this section.
- (3) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed pursuant to this chapter, but their use shall not be mandatory.

Section 99. KRS 275.055 is amended to read as follows:

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

(a)	Articles of organization	\$ 40.00
(b)	Application for certificate of authority as a foreign limited liability company	\$ 90.00
(c)	Amendment of article of organization	\$ 40.00
(d)	Restatement of articles of organization	\$ 40.00
(e)	Amendment and restatement of articles of organization	\$ 80.00
(f)	Articles of dissolution with respect to a domestic limited liability company	\$ 40.00
(g)	Limited liability company's 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 liability company	\$ 10.00
	not to exceed a total of	\$ 1,000.00
(i)	Limited liability company's 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 liability company	\$ 15.00
(k)	<i>Renewal of application to reserve a name for use by a domestic or foreign limited liability company</i>	<i>\$ 15.00</i>
(l)	Notice of the transfer of a name reserved for use by a domestic or a foreign limited liability company	\$ 15.00
(m) (t)	Application for use of indistinguishable name	\$ 20.00
(n) (m)	Application for registered name	\$ 36.00
(o) (n)	Application for renewal of registered name	\$ 36.00
(p) (o)	Articles of merger	\$ 50.00
(q) (p)	Application for amended certificate of authority	\$ 40.00
(r) (q)	Application for certificate of withdrawal	\$ 40.00
(s) (r)	Articles of correction	\$ 20.00
(t) (s)	Certificate of existence or authorization	\$ 10.00
(u) (t)	Reinstatement penalty following administrative dissolution	\$ 100.00
(v) (u)	Annual report	\$ 15.00
(w)	<i>Amendment to annual report</i>	<i>\$ 10.00</i>
(x)	<i>Articles of share exchange.....</i>	<i>\$ 50.00</i>
(y) (v)	Any other document required or permitted to be filed by this chapter	\$ 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 chapter. 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 documents relating to a domestic or foreign limited liability company:
 - (a) **Five dollars (\$5) per request for the first five (5) pages and** fifty cents (\$0.50) a page for **each page thereafter**~~[copying]~~; and
 - (b) Five dollars (\$5) for the certificate.
- (4) The county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to limited liability companies.

Section 100. KRS 275.060 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section and KRS 275.065(3), a document shall be effective at the time of filing on the date it is filed, as evidenced by **any means the Secretary of State may allow for the purpose of recording the date and time of filing**~~[the Secretary of State's date and time endorsement on the original document]~~, or 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.~~;~~ **and** If **the document**~~[it]~~ does so **specify** and is filed pursuant to subsection (1) of this section, **then** the document shall become effective at the time and date specified. If a delayed effective date but no time is specified, **then** 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.
- (3) A document filed in accordance with this section shall be effective regardless of a failure to file the document with the county clerk pursuant to KRS 275.045(11).

Section 101. KRS 275.065 is amended to read as follows:

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

Section 102. KRS 275.070 is amended to read as follows:

- (1) If a document delivered to the Secretary of State for filing satisfies the requirements of KRS 275.045, **then** the Secretary of State shall file it.
- (2) The Secretary of State shall file a document by **recording it as filed on the date and time of receipt**~~[stamping or otherwise endorsing "Filed," together with the Secretary of State's name and official title and the date and time of receipt, on both the original and the document copies and on the receipt for the filing fee]~~. After filing a

document, except as provided in KRS 275.125 and 275.420, the Secretary of State shall deliver ~~the document copies, with the filing fee receipt, or acknowledgment of receipt if no fee is required, attached,~~ to the domestic or foreign limited liability company or its representative ***a copy of the document with an acknowledgment of the date and time of filing.***

- (3) If the Secretary of State refuses to file a document, ***then*** the Secretary of State shall return it to the domestic or foreign limited liability company or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.
- (4) The Secretary of State's duty to file documents under this section shall be ministerial. The filing or refusal to file a document by the Secretary of State shall not:
 - (a) Affect the validity or invalidity of the document in whole or part;
 - (b) Relate to the correctness or incorrectness of information contained in the document; or
 - (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Section 103. KRS 275.080 is amended to read as follows:

A certificate ***from the Secretary of State delivered with*** ~~attached to,~~ a copy of the document 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 document is on file with the Secretary of State.

Section 104. KRS 275.095 is amended to read as follows:

All persons purporting to act as or on behalf of a limited liability company, knowing there has been no organization under this chapter, ***or who assume to act for a limited liability company without authority to do so,*** shall be jointly and severally liable for all liabilities created while so acting.

Section 105. KRS 275.100 is amended to read as follows:

- (1) The name of each limited liability company as set forth in its articles of organization shall contain the words "limited liability company" or "limited company" or the abbreviations "LLC" or "LC." The name of each limited liability company which is a professional limited liability company shall contain the words "professional limited liability company" or "professional limited company" or the abbreviations "PLLC" or "PLC." The word "Limited" may be abbreviated as "Ltd." and the word "Company" may be abbreviated as "Co."
- (2) Except as authorized by subsections (3) and (4) of this section, the name of a limited liability company shall be distinguishable from any name on record with the Secretary of State.
- (3) A limited liability company may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's 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 business entity 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 limited liability company; 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 Commonwealth.
- (4) A limited liability company may use the name, including the fictitious name, with any modification required by this section or KRS 275.410 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 liability company:
 - (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.
- (5) This chapter shall not control the use of ***assumed*** ~~fictitious~~ names.

- (6) The filing of articles of organization under the particular name of the limited liability company shall not automatically prevent the use of that name or protect that name from use by other persons.

Section 106. KRS 275.105 is amended to read as follows:

- (1) A person may apply to the Secretary of State to reserve the exclusive use of a limited liability company name, including the fictitious name, for a foreign limited liability company whose limited liability company name is not available for use in this Commonwealth. If the Secretary of State finds that the limited liability company name applied for is available, 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. ***During the thirty (30) days prior to the expiration of a reservation, the holder of the registration may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.***
- (2) The holder of a reserved limited liability company name may transfer the reservation to another person by delivering to the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.
- (3) ***The holder of a reserved limited liability company 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 107. KRS 275.135 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, every member shall be an agent of the limited liability company for the purpose of its business or affairs, and the act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is a member, shall bind the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge or has received notification of the fact that the member has no such authority.
- (2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:
 - (a) No member, solely by reason of being a member, shall be an agent of the limited liability company; and
 - (b) Every manager shall be an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is the manager shall bind the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge or has received notification of the fact that the manager has no such authority.
- (3) An act of a manager or a member which is apparently not for the carrying on in the usual way of the business or affairs of the limited liability company shall not bind the limited liability company unless, at the time of the transaction or at any other time, the act is authorized in accordance with the operating agreement.
- (4) An act of a manager or member in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.
- ~~[(5) Unless otherwise set forth in a written operating agreement, a member or manager of a limited liability company has the power and authority to delegate to one (1) or more other persons the member's or manager's powers to manage or control the business and affairs of the limited liability company, including without limitation the power to delegate to agents and employees of a member, manager, or limited liability company or to delegate by an agreement to other persons. This delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager of the limited liability company.]~~

Section 108. KRS 275.165 is amended to read as follows:

- (1) Unless the articles of organization vest management of the limited liability company in a manager or managers, management of the business and affairs of the limited liability company shall vest in the members. Subject to any provisions in the articles of organization, the operating agreement or this chapter restricting or enlarging the management rights and duties of any person or group or class of persons, the members shall have the right and authority to manage the affairs of the limited liability company and to make all decisions with respect thereto.
- (2) If the articles of organization vest management of the limited liability company in one (1) or more managers, except to the extent otherwise provided in the articles of organization, the operating agreement, or this chapter, the manager or managers shall have exclusive power to manage the business and affairs of the limited liability company. Unless otherwise provided in the articles of organization or the operating agreement, managers:
 - (a) Shall be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of the majority-in-interest of the members;
 - (b) Shall not be required to be members of the limited liability company or natural persons; and
 - (c) Unless they are sooner removed or sooner resign, shall hold office until their successors shall have been elected and qualified.
- (3) ***Unless otherwise set forth in a written operating agreement, a member or manager of a limited liability company has the power and authority to delegate to one (1) or more other persons the member's or manager's powers to manage or control the business and affairs of the limited liability company, including without limitation the power to delegate to agents and employees of a member, manager, or limited liability company or to delegate by an agreement to other persons. This delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager of the limited liability company.***

Section 109. KRS 275.170 is amended to read as follows:

Unless otherwise provided in ***a written***~~an~~ operating agreement:

- (1) A member or manager shall not be liable, responsible, or accountable in damages or otherwise to the limited liability company or the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless the act or omission constitutes wanton or reckless misconduct.
- (2) Each member and manager shall account to the limited liability company and hold as trustee for it any profit or benefit derived by that person without the consent of more than one-half (1/2) by number of the disinterested managers,~~one-half (1/2) by number of other persons participating in the management of the business or affairs of the limited liability company,~~ or ***a***~~the~~ majority-in-interest of the members ***from***:
 - (a) Any transaction connected with the conduct or winding up of the limited liability company; or
 - (b) Any use by the member or manager of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to the person as a result of his status as manager or member.
- (3) ***In determining whether a transaction has received the approval of a majority-in-interest of the members, membership interests owned by or voted under the control of the member or manager whose actions are under review in accordance with subsection (2) of this section, and membership interests owned by an entity owned by or voted under the control of that member or manager, shall not be counted in a vote of the members to determine whether to consent, and the membership interests shall not be counted in determining whether a quorum, if required by a written operating agreement, exists to consider whether to consent.***
- (4) ***A member of a***~~One who is a member of the~~ limited liability company in which management is vested in managers under KRS 275.165(2) and who is not a manager shall have no duties to the limited liability company or the other members solely by reason of acting in his ***or her*** capacity as a member.

Section 110. KRS 275.175 is amended to read as follows:

- (1) Unless otherwise provided in the articles of organization, a written operating agreement, or this chapter, the affirmative vote, approval, or consent of a majority-in-interest of the members, if management of the limited liability company is vested in the members, or ***a simple majority*** of the managers, ***each having a single vote***, if

the management of the limited liability company is vested in managers, shall be required to decide any matter connected with the business affairs of the limited liability company.

- (2) Unless otherwise provided in ~~a written~~^{writing in the} operating agreement, the affirmative vote, approval, or consent of the majority-in-interest of the members shall be required to:
 - (a) Amend a written operating agreement;
 - (b) Authorize a manager or member to do any act on behalf of the limited liability company that contravenes a written operating agreement, including any written provision thereof which expressly limits the purpose, business, or affairs of the limited liability company or the conduct thereof; or
 - (c) Amend the articles of organization to change the management of the limited liability company from members to managers or from managers to members.
- (3) Unless otherwise provided in the articles of organization, a written operating agreement, or this chapter, for all purposes of this chapter, the members of a limited liability company shall vote, approve, or consent in proportion to their contributions, based upon the agreed value as stated in the records of the limited liability company as required by KRS 275.185, made by each member to the extent they have been received by the limited liability company and have not been returned.
- (4) ***Unless otherwise provided in the articles of organization or the written operating agreement, no member of a limited liability company shall have the right to dissent from an amendment to the operating agreement.***

Section 111. KRS 275.185 is amended to read as follows:

- (1) A limited liability company shall keep at its principal office or other location as set forth in a written operating agreement, the following:
 - (a) A current list, and all past lists, setting forth the full name and last known mailing address of each member and, ***if any, each*** manager~~[, if any]~~;
 - (b) A copy of the articles of organization and all amendments thereto, together with executed copies of any power of attorney pursuant to which any articles of amendment have been executed;
 - (c) Copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the three (3) most recent years or, if those returns and statements were not prepared, copies of the information and statements provided to, or which should have been provided to, the members to enable them to prepare their federal, state, and local tax returns for those years;
 - (d) Copies of any effective written operating agreements and all amendments thereto, and copies of any written operating agreements no longer in effect; and
 - (e) Unless contained in writing in an operating agreement:
 1. A writing setting forth the amount of cash, if any, and a statement of the agreed value of other property or services, if any, contributed by each member and the times at which or events upon the happening of which any additional contributions are to be made;
 2. A writing stating events, if any, upon the happening of which the limited liability company is to be dissolved and its affairs wound up; and
 3. Other writings, if any, prepared pursuant to a requirement, if any, in an operating agreement.
- (2) Upon reasonable written request, a member may, at the member's own expense, inspect and copy during ordinary business hours any limited liability company record, where the record is located or at a reasonable location.
- (3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in managers, shall render, to the extent the circumstances render it just and reasonable, true and full information of all matters affecting the members to any member, and the member's agent, and to the legal representative of any deceased member or of any member under legal disability.

- (4) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any member or manager for the debts and obligations of the limited liability company.
- (5) ***A written operating agreement may impose reasonable limitations upon the use of any record of or information with respect to a limited liability company. Except as to limitations set forth in a written operating agreement to which a member requesting information has assented, the limited liability company bears the burden of proof in demonstrating the reasonableness of any restrictions imposed.***

Section 112. KRS 275.190 is amended to read as follows:

- (1) Each domestic limited liability company, and each foreign limited liability company authorized to transact business in this Commonwealth, shall deliver to the Secretary of State for filing an annual report that sets forth:
 - (a) The name of the limited liability company and the state or country under whose law it is organized;
 - (b) The address of its registered office and the name of its registered agent at that office in this state;
 - (c) The address of its principal office; and
 - (d) The names and business addresses of its managers, if management is vested in managers, or one (1) or more designated members, if management is vested in members.
- (2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the limited liability company.
- (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 domestic limited liability company was organized or a foreign limited liability company was authorized to transact business. 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, the Secretary of State shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for ***completion. For purposes of KRS 275.085(2)(e), an annual report returned for completion pursuant to this subsection shall not be deemed to have been delivered.***
- (5) ***A domestic or foreign limited liability company 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 such form as is provided by the Secretary of State[correction].***

Section 113. KRS 275.195 is amended to read as follows:

- (1) A limited liability company interest may be issued in exchange for consideration consisting of cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.
- (2) ***A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest without making a contribution or being obligated to make a contribution to the limited liability company.***
- (3) ***Unless otherwise provided in the operating agreement, a person may be admitted to a limited liability company as a member without acquiring a limited liability company interest.***

Section 114. KRS 275.200 is amended to read as follows:

- (1) ***An obligation of***~~A promise by~~ a member to ***make a contribution***~~contribute~~ to the limited liability company shall not be enforceable unless set forth in a writing signed by the member.
- (2) Unless otherwise provided in an operating agreement, a member shall be obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or other reason.
- (3) If a member does not make ~~a~~~~the~~ required contribution of property or services, ***then*** the member shall be obligated, at the option of the limited liability company, to contribute cash equal to that portion of value of the stated contribution that has not been made.
- (4) Unless otherwise provided in an operating agreement, ~~an~~~~the~~ obligation of a member to make a contribution may be compromised only with the unanimous consent of the members.

- (5) Notwithstanding any compromise approved pursuant to subsection (4) of this section, a creditor of a limited liability company who extends credit or otherwise acts in reliance on ~~an~~~~the~~ obligation after the member executes a writing which reflects ~~that~~~~the~~ obligation and before ~~any such~~~~the~~ compromise **is reached**, may enforce the original obligation.

Section 115. KRS 275.225 is amended to read as follows:

- (1) No distribution shall be made if, after giving effect to the distribution:
 - (a) The limited liability company would not be able to pay its debts as they become due in the usual course of business; or
 - (b) The limited liability company's assets would be less than the sum of its liabilities plus, unless otherwise provided in an operating agreement, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution which are superior to the rights of the member receiving the distribution.
- (2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) of this section either on:
 - (a) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or
 - (b) A fair valuation or other method that is reasonable under the circumstances.
- (3) Except as provided in subsection (5) of this section, the effect of a distribution under subsection (1) of this section shall be measured as of:
 - (a) The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or
 - (b) The date payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.
- (4) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section shall be at parity with the limited liability company's indebtedness to its general unsecured creditors, except to the extent subordinated by agreement.
- (5) If terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, **then** indebtedness of a limited liability company, including indebtedness issued as a distribution, shall not be a liability for purposes of determinations made under subsection (1) of this section.
- (6) If the indebtedness is issued as a distribution, **then** each payment of principal or interest on the indebtedness shall be treated as a distribution, the effect of which shall be measured on the date the payment is actually made.
- (7) ***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 benefit program.***

Section 116. KRS 275.255 is amended to read as follows:

- (1) Unless otherwise provided in ~~a written~~~~writing in an~~ operating agreement:
 - (a) A limited liability company interest shall be assignable in whole or in part;
 - (b) An assignment shall entitle the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;
 - (c) An assignment of a limited liability company interest shall not dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member other than the right to receive distributions pursuant to subsection (1)(b) of this section;

- (d) Until the assignee of a limited liability company interest becomes a member pursuant to KRS 275.265(1), the assignor shall continue to be a member and to have the power to exercise any rights of a member, subject to the members' right to remove the assignor pursuant to KRS 275.280(1)(c)2.;
 - (e) Until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment; and
 - (f) The assignor of a limited liability company interest shall not be released from liability as a member solely as result of the assignment.
- (2) A ~~written~~~~[an]~~ operating agreement may provide that a member's limited liability company interest may be evidenced by a certificate of limited liability company interest issued by the limited liability company and may also provide for the assignment or transfer of any interest represented by the certificate.
 - (3) Unless otherwise provided in a ~~written~~~~[an]~~ operating agreement, the pledge of or granting of a security interest, lien, or other encumbrance in or against any or all of the limited liability company interest of a member shall not constitute an assignment and shall not cause the member to cease to be a member or cease to have the power to exercise any rights or powers of a member.
 - (4) ***Limitations upon the assignment or pledge of a membership interest set forth or adopted in accordance with this section shall be enforced notwithstanding KRS 355.9-406 and 355.9-408.***

Section 117. KRS 275.260 is amended to read as follows:

- (1) ***This section provides the exclusive remedy by which the judgment creditor of a member or the assignee of a member may satisfy a judgment out of the judgment debtor's limited liability company interest.***
- (2) ***On application to a court of competent jurisdiction by a judgment creditor of a member or a member's assignee, a court may charge the judgment debtor's interest in the limited liability company with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of a assignee, and shall have no right to participate in the management or to cause the dissolution of the limited liability company. 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 limited liability company interest and make all other orders, directions, accounts, and inquiries the judgment creditor might have made or which the circumstances of the case may require to give effect to the charging order.***
- (3) ***A charging order constitutes a lien on and the right to receive distributions made with respect to the judgment debtor's limited liability company interest. A charging order does not of itself constitute an assignment of the limited liability company interest.***
- (4) ***The court may order a foreclosure upon the limited liability company interest subject to the charging order at any time. The purchaser of the liability company interest at the foreclosure sale has the rights of a assignee. At any time before foreclosure, the charged limited liability company interest may be redeemed:***
 - (a) ***By the judgment debtor;***
 - (b) ***With property other than limited liability company property, by one (1) or more of the other members; and***
 - (c) ***With limited liability company property, by the limited liability company with the consent of all members whose interest are not so charged.***
- (5) ***This section does not deprive a member or a member's transferee of the benefit of any exemption laws applicable to the member's or transferee's limited liability company interest.***~~[On application to a court of competent jurisdiction by any judgment creditor of a member, the court shall charge the member's limited liability company interest with payment of the unsatisfied amount of judgment with interest thereon. To the extent so charged, the judgment creditor shall have only the rights of an assignee of the member's limited liability company interest. This chapter shall not deprive any member of the benefit of any exemption laws applicable to the member's limited liability company interest].~~

Section 118. KRS 275.285 is amended to read as follows:

A limited liability company shall be dissolved and ***it shall commence to wind up its affairs***~~[its affairs wound up]~~ upon the happening of the first to occur of the following:

- (1) The expiration of the term of the limited liability company set forth in the articles of organization, if any;~~[, or]~~

- (2) Upon the occurrence of events specified in the articles of organization or a written operating agreement;
- (3)~~(2)~~ Unless otherwise set forth in the operating agreement, the written consent of ~~all~~~~a majority in interest~~ of the members of a limited liability company;
- (4)~~(3)~~ ***There are no remaining members, except that the limited liability company shall not be dissolved and its affairs shall not be wound up when:***
 - (a) ***A member is admitted to the limited liability company in the manner provided for in a written operating agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; or***
 - (b) ***Unless otherwise provided in a written operating agreement, within ninety (90) days after the occurrence of the event that terminated the continued membership of the last remaining member, the successor-in-interest of the last remaining member agrees in writing to continue the limited liability company and to the admission of the successor-in-interest of that member or its designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; or***
- (5) Entry of a decree of judicial dissolution under KRS 275.290; or
- (6)~~(4)~~ Filing of a certificate of dissolution by the Secretary of State under KRS 275.295.

Section 119. KRS 275.295 is amended to read as follows:

- (1) The Secretary of State may commence a proceeding to administratively dissolve a limited liability company if:
 - (a) The limited liability company does not deliver its annual report to the Secretary of State within sixty (60) days after the annual report is due;
 - (b) The limited liability company is without a registered agent or registered office in Kentucky for at least sixty (60) days;~~or~~
 - (c) The limited liability company does not notify the Secretary of State within sixty (60) days after its registered agent or registered office has been changed, its registered agent has resigned, or its registered office has been discontinued; ***or***
 - (d) ***The limited liability company's term as set forth in its articles of organization expires.***
- (2)
 - (a) If the Secretary of State determines that one (1) or more grounds exist under subsection (1) of this section for dissolving a limited liability company, the Secretary of State shall serve the limited liability company with written notice of the determination ***by first class mail at its principal place of business address.***
 - (b) If the limited liability company 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 notice was mailed, the Secretary of State shall administratively dissolve the limited liability company by signing a certificate of dissolution that states the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the limited liability company by mailing the notice by first class mail to the limited liability company at its ***principal place of business address.*** ***If a limited liability company is dissolved for having reached the end of its period of duration, and it does not within sixty (60) days of the end of its duration amend the articles of organization to extend its duration, the certificate of dissolution shall be effective as of the end of the period of duration as set forth in the articles of organization***~~registered office~~.
- (3)
 - (a) A limited liability company administratively dissolved under subsection (2) of this section, ***other than for failure to amend the articles of organization to extend the duration of the limited liability company within sixty (60) days of the expiration of its term,*** may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application shall:
 - 1. State the name of the limited liability company and the effective date of its administrative dissolution;
 - 2. State that the ground or grounds for dissolution either did not exist or have been eliminated;

3. State that the limited liability company's name satisfies the requirements under KRS 275.100;
 4. Contain a certificate from the Kentucky Department of Revenue stating that all taxes owed by the limited liability company have been paid; and
 5. Be accompanied by the reinstatement penalty and the current fee on filing each delinquent report as provided for in KRS 275.055(1).
- (b) If the Secretary of State determines that the application contains the information required by paragraph (a) of this subsection and that the information is correct, the Secretary of State shall:
1. Cancel the certificate of dissolution and prepare a certificate of existence that states the determination and the effective date of existence; and
 2. Serve a copy on the limited liability company ***in the manner provided in subsection (2)(a) of this section.***
- (c) When the reinstatement is effective, the reinstatement shall relate back to and take effect as of the effective date of the administrative dissolution, and the limited liability company shall resume carrying on business as if the administrative dissolution had never occurred.
- (4) (a) If the Secretary of State denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall serve the limited liability company with a written notice that explains the reason or reasons for denial by mailing notice by first-class mail to the limited liability company at its registered office or, if none, to the last principal office identified on the most recent annual report, ***or, if none, the articles of organization.***
- (b) The limited liability company may appeal the denial of reinstatement to the Circuit Court of the county where the limited liability company's principal office, or, if there is none in Kentucky, its registered office, is located within thirty (30) days after service of the notice of denial by doing the following:
1. Filing a petition with the court to set aside the dissolution; and
 2. Attaching to the petition a copy of the Secretary of State's certificate of dissolution, the limited liability company's application for reinstatement, and the Secretary of State's notice of denial.
- (c) The court may order the Secretary of State to reinstate the dissolved limited company or may take other action the court considers appropriate.
- (d) The court's final decision may be appealed as are other civil proceedings.

Section 120. KRS 275.300 is amended to read as follows:

Unless otherwise provided in a written operating agreement:

- (1) The business or affairs of the limited liability company may be wound up:
 - (a) By the members or managers who have authority pursuant to KRS 275.165 to manage the limited liability company prior to dissolution; or
 - (b) If one (1) or more of the members or managers have engaged in wrongful conduct, or upon other cause shown, by the Circuit Court for the county in which the principal office of the limited liability company is located or in which the registered office of the limited liability company is located, on application of any member, any member's legal representative, or assignee.
- (2) A dissolved limited liability company shall continue its existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
 - (a) Collecting its assets;
 - (b) Disposing of its properties that will not be distributed in kind to its members;
 - (c) Discharging or making provision for discharging its liabilities;
 - (d) Distributing its remaining property among its members according to their interests; and
 - (e) Doing every other act necessary to wind up and liquidate its business and affairs.
- (3) Dissolution of a limited liability company shall not:

- (a) Transfer title to the limited liability company's property;
- (b) Prevent transfer of a limited liability company interest, although the authorization to dissolve may provide for the limited liability company restricting the transfer of the limited liability company's interest;
- (c) Subject its members or managers to standards of conduct different from those prescribed herein;
- (d) Change quorum or voting requirements for its members or managers; change provisions for selection, resignation, or removal of its members or managers; or change provisions for amending its operating agreement;
- (e) Prevent commencement of a proceeding by or against the limited liability company in its name;
- (f) Abate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution;
- (g) Terminate the authority of the registered agent of the limited liability company;~~{or}~~
- (h) Alter the obligations and responsibilities of the limited liability company as prescribed by applicable federal or state law with regard to the filing or examination of all federal and state tax returns or the payment, assessment, or collection of any federal or state tax due with respect to those returns; **or**
- (i) ***Abate or suspend KRS 275.150(1).***

Section 121. KRS 275.315 is amended to read as follows:

After the dissolution of the limited liability company pursuant to ***Section 118 of this Act***~~[KRS 275.285(1), (2), or (3)]~~, the limited liability company shall file articles of dissolution with the Secretary of State which set forth:

- (1) The name of the limited liability company;
- (2) A statement of the subsection of KRS 275.285 pursuant to which the limited liability company has dissolved;
- (3) The effective date, which shall be a date certain, of the dissolution; and
- (4) Any other information the members or managers filing the articles of dissolution shall deem proper.

Section 122. KRS 275.345 is amended to read as follows:

- (1) Unless otherwise provided in writing in a written operating agreement, and subject to any law applicable to business entities other than limited liability companies, one (1) or more limited liability companies may merge with or into one (1) or more other business entities with the limited liability company or other business entity being the surviving or resulting limited liability company or other business entity.
- (2) Rights or securities of or interests in a business entity that is a party to the merger may be exchanged for or converted into cash, property, obligations, rights, or securities of or interests in the surviving or resulting business entity or of any other business entity.
- (3) ***Unless otherwise provided in the articles of organization, a written operating agreement, or a written agreement and plan of merger, no member of a limited liability company shall have the right to dissent from a merger.***
- (4) ***A nonprofit limited liability company shall not merge with or into any business entity which is not a domestic nonprofit limited liability company.***

Section 123. KRS 275.350 is amended to read as follows:

- (1) Unless otherwise provided in a written operating agreement, a limited liability company that is a party to a proposed merger shall approve the plan of merger in KRS 275.355 by a majority-in-interest of the members.
- (2) Each business entity that is a party to a proposed merger shall approve the plan of merger in the manner and by the vote required by the laws applicable to the business entity.
- (3) Each business entity that is a party to the merger shall have the rights to abandon the merger as provided for in the plan of merger or in the laws applicable to the business entity.

- (4) ***Unless otherwise provided in the articles of organization, a written operating agreement, or a written agreement and plan of merger, no member of a limited liability company shall have the right to dissent from a merger.***

Section 124. KRS 275.370 is amended to read as follows:

- (1) A partnership or limited partnership may be converted to a limited liability company pursuant to this section.
- (2) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company shall, in the case of a partnership, be approved by all the partners or by a number or percentage specified for conversion in the partnership agreement or, in the case of a limited partnership, by all the partners, notwithstanding any provision to the contrary in the limited partnership agreement.
- (3) After the conversion is approved under subsection (2) of this section, the partnership or limited partnership shall file articles of organization with the office of the Secretary of State which satisfy the requirements of KRS 275.025 and include:
 - (a) A statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership, as the case may be;
 - (b) Its former name;
 - (c) In the case of a partnership, a statement of the number of votes cast by the partners entitled to vote 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; and
 - (d) ***If the partnership has filed a statement of registration as a limited liability partnership in accordance with Section 146 of this Act or a statement of qualification in accordance with KRS 362.1-1001, each shall be deemed canceled as of the effective date and time of the articles of organization as determined in accordance with Section 94 of this Act; and***
 - (e) ***In the case of a limited partnership, the limited partnership's certificate of limited partnership shall be deemed canceled as of the effective date and time of the articles of organization as determined in accordance with Section 94 of this Act***~~[a statement that any assumed name has been canceled; and~~
 - ~~(d) In the case of a limited partnership, the limited partnership shall cancel its certificate of limited partnership and any assumed name pursuant to this Commonwealth's limited partnership law].~~
- (4) The conversion shall take effect~~[, in the case of a partnership,]~~ when the articles of organization are filed with the office of the Secretary of State or, ***as provided in Section 94 of this Act***, at a~~[any]~~ later date specified in the articles of organization~~[or, in the case of a limited partnership, when the certificate of limited partnership is canceled].~~
- (5) A partner or, in the case of a limited partnership, a general partner who becomes a member of a limited liability company as a result of a conversion shall remain liable as a partner or general partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect. If the other party to a transaction with the limited liability company reasonably believes when entering the transaction that the member undertaking the transaction is a partner in a partnership or a general partner in a limited partnership, the member shall be liable for an obligation incurred by the limited liability company within ninety (90) days after the conversion takes effect. The partner's or general partner's liability for all other obligations of the limited liability company incurred after the conversion takes effect shall be that of a member as provided in this chapter. A limited partner who becomes a member as a result of a conversion shall remain liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect.

Section 125. KRS 275.375 is amended to read as follows:

- (1) A partnership or limited partnership that has been converted pursuant to this chapter shall be 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 ***limited liability company*** ***without assignment, reversion, or impairment***~~[business entity];~~

- (b) All obligations of the converting partnership or limited partnership shall continue as obligations of the converted **limited liability company**~~[business entity]; [and]~~
- (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 limited liability company may be substituted in any pending action or proceeding for the name of the converting partnership or limited partnership; and**
- (d) **The written operating agreement of the converted limited liability company shall be binding upon each person who becomes a member of the limited liability company.**

Section 126. KRS 275.380 is amended to read as follows:

- (1) Subject to the Constitution of this Commonwealth:
 - (a) The laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs, **including the inspection of the books, records, and documents**, and the liability of its members, except as provided in subsection (2) of this section; and
 - (b) A foreign limited liability company shall not be denied registration by reason of any difference between the laws of another jurisdiction under which a foreign limited liability company is organized and the laws of this Commonwealth.
- (2) A certificate of authority obtained pursuant to this chapter shall not authorize a foreign limited liability company to exercise any powers or engage in any business that a domestic limited liability company is forbidden to exercise or engage in by the laws of this Commonwealth.

Section 127. KRS 275.395 is amended to read as follows:

- (1) A foreign limited liability company 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 set forth:
 - (a) The name of the foreign limited liability company, or if its name is unavailable for use in this Commonwealth, a company name that satisfies the requirements of KRS 275.410;
 - (b) The name of the state or country under whose law it is organized;
 - (c) Its date of organization and, if the limited liability company has a specific date of dissolution, the latest date upon which it is to dissolve;
 - (d) The street address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company;
 - (e) The address of its registered office in this Commonwealth and the name of its registered agent at that office;
 - (f) The names and usual business addresses of its current managers, if any; and
 - (g) A statement that, as of the date of filing, the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its **organization**~~[formation]~~.
- (2) A written statement of the initial registered agent consenting to serve in that capacity shall accompany **an application for** the certificate of authority.

Section 128. KRS 275.400 is amended to read as follows:

- (1) A foreign limited liability company authorized to transact business in this Commonwealth shall obtain an amended certificate of authority from the Secretary of State if it changes:
 - (a) Its **real**~~[company]~~ name;
 - (b) The latest date on which it is to dissolve; or
 - (c) The state or country of its organization.
- (2) The requirements of KRS 275.395 for obtaining an original certificate of authority shall apply to obtaining an amended certificate under this section.

Section 129. KRS 275.405 is amended to read as follows:

- (1) A certificate of authority shall authorize the foreign limited liability company to which it is issued to transact business in this Commonwealth subject to the right of the Commonwealth to revoke the certificate as provided in this chapter.
- (2) A foreign limited liability company with a valid certificate of authority shall have the same but no greater rights as, and shall have the same but no greater privileges as, and except as otherwise provided by this chapter shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic limited liability company.
- (3) This chapter shall not authorize this Commonwealth to regulate the organization or internal affairs, *including the inspection of books, records and documents*, of a foreign limited liability company authorized to transact business in this Commonwealth.

Section 130. KRS 275.410 is amended to read as follows:

- (1) If the *real* name of a foreign limited liability company does not satisfy the requirements of KRS 275.100, the foreign limited liability company, to obtain or maintain a certificate of authority to transact business in this Commonwealth:
 - (a) May add to its name for use in this Commonwealth:
 1. The words "limited liability company," "limited company," "professional limited liability company," or "professional liability company." The word "limited" may be abbreviated as "Ltd" and the word "Company" may be abbreviated as "Co."; or
 2. The abbreviations "LLC," "LC," "PLLC," or "PLC"; or
 - (b) May use a fictitious name to transact business in this Commonwealth if its real name is unavailable and it delivers to the Secretary of State for filing a certificate by a person authorized to execute documents pursuant to KRS 275.045(6) that the limited liability company has adopted the fictitious name.
- (2) Except as authorized by subsections (3) and (4) of this section, the name, including a fictitious name, of a foreign limited liability company shall be distinguishable from *any name of record* ~~the name of any other business entity upon the records~~ with the Secretary of State.
- (3) A foreign limited liability company may apply to the Secretary of State for authorization to use in this Commonwealth the name of another business entity, organized or authorized to transact business in this Commonwealth, that is not distinguishable ~~upon his records~~ from ~~a~~ *the name of record with the Secretary of State* ~~applied for~~. The Secretary of State shall authorize use of the name applied for if:
 - (a) The business entity 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 limited liability company; 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 Commonwealth.
- (4) A foreign limited liability company may use in this Commonwealth the name, including the fictitious name, of another business entity that is used in this Commonwealth if the business entity is organized or authorized to transact business in this Commonwealth and the foreign limited liability company:
 - (a) Has merged with the other business entity;
 - (b) Has been formed by reorganization of the business entity; or
 - (c) Has acquired all or substantially all of the assets, including the name, of the other business entity.
- (5) If a foreign limited liability company authorized to transact business in this Commonwealth changes its name to one that does not satisfy the requirements of this section, it shall not transact business in this Commonwealth under the changed name until it adopts a name satisfying the requirements of this section and obtains an amended certificate of authorization under KRS 275.400.

Section 131. KRS 279.010 is amended to read as follows:

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

- (1) "Acquire" means to construct, purchase, obtain by lease, devise, gift or by eminent domain, or to obtain by any other lawful means.
- (2) "Board" means the board of directors of a corporation formed under this chapter.
- (3) **"Business entity" means a domestic and foreign limited liability company, corporation, general partnership, limited partnership, business or statutory trust, and not-for-profit unincorporated association;**
- (4) **"Corporation" means a profit or nonprofit corporation formed under the laws of any state or a foreign country;**
- (5) "Farm Credit Act" means Section 12 of the Federal Farm Credit Act of 1935 and the amendments thereto.
- ~~(6)(4)~~ "Federal agency" means and includes the United States, the President of the United States, and all federal authorities, instrumentalities and agencies in the ordinary sense.
- ~~(7)(5)~~ "Improve" means to construct, reconstruct, extend, enlarge, alter, better or repair.
- ~~(8)(6)~~ "Member" means and includes each person signing the articles of incorporation of a corporation formed under this chapter, each person later admitted to membership according to law or according to the articles of incorporation or bylaws of the corporation, and each common stockholder in a corporation organized under this chapter that has capital stock.
- (9) **"Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity;**
- ~~(10)(7)~~ "Obligations" means and includes negotiable bonds, notes, debentures, interim certificates or receipts and all other evidences of indebtedness either issued or the payment thereof assumed by a corporation organized under this chapter.
- (11) **"Real name" shall have the meaning set forth in Section 164 of this Act;**
- ~~(12)(8)~~ "System" means and includes any plant, works, facilities and properties, and all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission or distribution of electric energy.

Section 132. KRS 279.030 is amended to read as follows:

- (1) The articles of incorporation shall set forth:
 - (a) The name of the corporation, which shall be **distinguishable from any name of record with the Secretary of State**~~[such as to distinguish it from any other corporation]~~.
 - (b) The purpose for which it is formed.
 - (c) The place, including the county, where its principal office will be located.
 - (d) A reasonable description of the territory in which its operations are to be conducted.
 - (e) The number of directors.
 - (f) The names and post office addresses of the directors who are to manage the affairs of the corporation for the first year of its existence, or until the first meeting called to elect directors, or until the successors of the first directors are elected and have qualified.
 - (g) The period limited for the duration of the corporation, or that the corporation is to be perpetual.
 - (h) If the corporation is organized without capital stock, the terms upon which members may be admitted and the terms upon which their membership shall terminate.
 - (i) If the corporation is organized with capital stock, the amount of the stock, the number of shares into which it is divided and the par value.
 - (j) If the capital stock is divided into common and preferred stock, as it may be, the number of shares to which preference is granted and the number of shares to which no preference is granted, and the nature and definite extent of the preference and privileges granted to each.

- (2) The articles of incorporation may contain any other lawful provision that the incorporators choose to insert for the purpose of regulating the business and affairs of the corporation, for the purpose of creating, defining, limiting or regulating the rights, powers and duties of the corporation and its board of directors and members, and the exercise of any such powers, or for the purpose of creating or defining the rights and privileges of the members of the corporation among themselves, including separation of members into classes or districts and providing for representation of each class or district on the board of directors.
- (3) *A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records. The Secretary of State shall authorize use of the name applied for if:*
 - (a) *The other entity 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 entity that is used in this state if the other entity is incorporated, organized, or authorized to transact business in this state and the proposed user corporation:*
 - (a) *Has merged with the other entity;*
 - (b) *Has been formed by reorganization of the other entity; or*
 - (c) *Has acquired all or substantially all of the assets, including the name, of the other entity.*
- (5) *This chapter does not control the use of assumed names.*
- (6) *The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.*

Section 133. KRS 279.060 is amended to read as follows:

The words "Rural Electric Cooperative" shall not be used in the *real, fictitious, or assumed* name of any corporation, *limited liability company, partnership, limited partnership, or other business entity* other than one (1) formed under this chapter.

Section 134. KRS 279.310 is amended to read as follows:

As used in KRS 279.320 to 279.600, unless the context requires otherwise:

- (1) "Cooperative" means any corporation organized under KRS 279.320 to 279.600 or which becomes subject to those sections in the manner provided therein.
- (2) "Person" means any natural person, firm, association, corporation, business trust, or partnership.
- (3) As used in this chapter, the term "telephone service" shall include in its meaning communications services of all kinds allowed to any other telephone utility, authorized by regulatory agency and with some unregulated, that being the transmission of voice, data, sounds, signals, pictures, writing, or signs of all kinds, by use of wire, radio, light, electro-magnetic impulse, broadband (wideband) spectrum, or any other transmission mode and facility used in rendition of such services; but shall not include in their meaning message telegram service, or radio broadcasting services or facilities within the meaning of Section 153(O) of the Federal Communications Act of 1934, as amended.
- (4) "Acquire" means to construct, purchase, obtain by lease, devise, gift, or eminent domain, or to obtain by any other lawful means.
- (5) "Board" means the board of trustees of a corporation formed under KRS 279.320 to 279.600.
- (6) "Federal agency" means and includes the United States, the President of the United States, and all federal authorities, instrumentalities, and agencies in the ordinary sense.
- (7) "Improve" means to construct, reconstruct, extend, enlarge, alter, better, or repair.
- (8) "Member" means and includes each person signing the articles of incorporation of a corporation formed under KRS 279.320 to 279.600, each person later admitted to membership according to law or according to the

articles of incorporation or bylaws of the corporation, and each common stockholder in a corporation, having capital stock, organized under KRS 279.320 to 279.600.

- (9) "Obligations" means and includes negotiable bonds, notes, debentures, interim certificates or receipts, and all other evidences of indebtedness either issued or the payment thereof assumed by a corporation organized under KRS 279.320 to 279.600.
- (10) "System" means and includes any plant, works, facilities, and properties, and all parts thereof and appurtenances thereto, used or useful in the operation and maintenance of telephone communication service.
- (11) "Rural area" shall be deemed to mean any area of this state not included within the boundaries of any incorporated or unincorporated city or of a consolidated local government, having a population in excess of fifteen hundred (1,500) inhabitants.
- (12) "Telephone company" means any natural person, firm, association, corporation, or partnership owning, leasing, or operating any line, facility, or system used in the furnishing of telephone service within this state.
- (13) *"Business entity" means a domestic and foreign limited liability company, corporation, general partnership, limited partnership, business or statutory trust, and not-for-profit unincorporated association.*
- (14) *"Corporation" means a profit or nonprofit corporation formed under the laws of any state or a foreign country.*
- (15) *"Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity.*
- (16) *"Real name" shall have the meaning set forth in Section 164 of this Act.*

Section 135. KRS 279.340 is amended to read as follows:

- (1) The name of a cooperative shall include the words "Telephone," "Telecommunications," "Company" or "Corporation" and the abbreviation "Inc.," unless, in an affidavit made by its president or vice president, and filed with the Secretary of State, or in an affidavit made by a person signing articles of incorporation, consolidation, merger or conversion, which relate to such cooperative, and filed, together with any such articles, with the Secretary of State, it shall appear that the cooperative desires to do business in another state and is or would be precluded therefrom by reason of the inclusion of such words or either thereof in its name. The name may include the word "Cooperative."~~[The name of a cooperative shall be distinct from the name of any other cooperative or corporation organized under the laws of, or authorized to do business in this state.]~~
- (2) *Except as authorized by subsection (3), (4), or (5) of this section, the name of a cooperative shall be distinguishable from any name of record with the Secretary of State.*
- (3) This section shall not apply to any corporation which becomes subject to KRS 279.310 to 279.600 by complying with the provisions of KRS 279.470, which does business in this state pursuant to KRS 279.570 and which elects to retain a corporate name which does not comply with this section.
- (4) *A cooperative may apply to the Secretary of State for authorization to use a name that is not distinguishable from a name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:*
 - (a) *The other entity 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 cooperative; 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.*
- (5) *A cooperative may use the name, including the fictitious name, of another entity that is used in this state if the other entity is incorporated, organized, or authorized to transact business in this state and the proposed user cooperative:*
 - (a) *Has merged with the other entity;*
 - (b) *Has been formed by reorganization of the other entity; or*
 - (c) *Has acquired all or substantially all of the assets, including the name, of the other entity.*

- (6) *This chapter does not control the use of assumed names.*
- (7) *The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.*

Section 136. KRS 304.38-040 is amended to read as follows:

- (1) A corporation, limited liability ~~company~~~~corporation~~, or partnership may apply to the executive director for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this subtitle.
- (2) Health maintenance organizations which are corporations may be organized by applying the provisions of KRS Chapter 271B, if for profit, and KRS Chapter 273, if for nonstock, nonprofit, to the extent that the same are not inconsistent with the express provisions of this subtitle.
- (3) Each application for a certificate of authority shall be submitted to the executive director upon a form prescribed by him and shall set forth or be accompanied by:
 - (a) Evidence that the applicant has been issued a certificate of need in accordance with the provisions of KRS Chapter 216B, or evidence that no certificate of need is required by KRS Chapter 216B;
 - (b) Articles of incorporation, **articles of organization**, ~~or~~ partnership agreement, **or other applicable documents** in quadruplicate~~originals~~ acknowledged and verified by the applicant~~, such as the articles of incorporation, articles of association, partnership agreement, or other applicable documents~~;
 - (c) The initial bylaws, **operating agreement or other equivalent documents** of the organization in triplicate (or any other similar documents);
 - (d) A statement which shall include describing the health maintenance organization:
 - 1. The health services to be offered;
 - 2. The financial risks to be assumed;
 - 3. The initial geographic area to be served;
 - 4. Pro forma financial projections for the first three (3) years of operations including the assumptions the projections are based upon;
 - 5. The sources of working capital and funding;
 - 6. A description of the persons to be covered by the health maintenance organization;
 - 7. Any proposed reinsurance arrangements;
 - 8. Any proposed management, administrative, or cost-sharing arrangements; and
 - 9. A description of the health maintenance organization's proposed method of marketing;
 - (e) The names, addresses, and positions of the initial board of directors, board of trustees, or other governing body responsible for the conduct of the affairs of the applicant;
 - (f) Any proposed evidence of coverage to be issued by the applicant to individuals, enrollees, groups, or other contract holders; and
 - (g) Evidence of financial responsibility as provided in KRS 304.38-060.

Section 137. KRS 304.38-070 is amended to read as follows:

- (1) This subsection applies to a corporation or limited liability ~~company~~~~corporation~~ applying for and holding a certificate of authority as a health maintenance organization:
 - (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a corporation or limited liability ~~company~~~~corporation~~ shall possess and thereafter maintain unimpaired paid-in capital stock of one million dollars (\$1,000,000), and, when first so authorized, shall possess initial free surplus of not less than two million dollars (\$2,000,000);
 - (b) A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required

for such authority immediately prior to July 15, 1986. Notwithstanding the other provisions hereof, the exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the date it has accumulated capital and surplus equal to or in excess of the capital and surplus required by paragraph (a) of this subsection; and

- (c) Each corporation authorized as a health maintenance organization shall at all times maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars (\$250,000) and shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the executive director. A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency as required for such authority immediately prior to July 15, 1986. The exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which it has accumulated additional surplus equal to or in excess of the additional surplus required by this subsection.
- (2) This subsection applies to a partnership applying for or holding a certificate of authority as a health maintenance organization:
- (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a partnership shall possess, when first so authorized, a total of at least three million dollars (\$3,000,000) in its capital accounts. Thereafter, a partnership authorized as a health maintenance organization shall possess and maintain a total of at least one million two hundred fifty thousand dollars (\$1,250,000) in its capital accounts and shall comply at all times with the risk-based capital requirement established in administrative regulations promulgated by the executive director;
 - (b) A partnership holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for such authority immediately prior to July 15, 1986. The exception provided for in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which the total of the funds which it has accumulated in its capital accounts equal or exceed the total of the funds in its capital accounts required by this subsection.
- (3) A corporation, partnership, or limited liability ~~company~~~~corporation~~ applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and processes health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program shall comply with risk-based capital (RBC) requirements as follows:
- (a) For purposes of this subsection, risk-based capital shall be determined in accordance with the risk-based capital requirements for health maintenance organizations established under this subtitle and any administrative regulation promulgated pursuant to KRS Chapter 13A, except as otherwise provided in this subsection. A corporation, partnership, or limited liability ~~company~~~~corporation~~ applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and processes health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program shall comply with the same risk-based capital requirements as other health maintenance organizations, except that no additional phase-in or risk-based capital reports shall be required for 2000 or 2001, and the risk-based capital levels shall be established in accordance with paragraph (b) of this subsection;
 - (b) For the risk-based capital reports required to be filed by health maintenance organizations which manage care and process health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program, the risk-based capital levels shall be defined as follows:
 - 1. "Company Action Level RBC" means the product of two (2.0) and its Authorized Control Level RBC;
 - 2. "Regulatory Action Level RBC" means the product of one and five-tenths (1.5) and its Authorized Control Level RBC;

3. "Authorized Control Level RBC" means the product of four-tenths (.40) and the risk-based capital after covariance determined under the risk-based capital formula in accordance with the RBC instruction; and
 4. "Mandatory Control Level RBC" means the product of seven-tenths (.70) and the Authorized Control Level RBC; and
- (c) A corporation, partnership, or limited liability ~~company~~~~corporation~~ applying for and holding a certificate of authority as a health maintenance organization managing care, processing health care claims, or providing health benefits to groups or individuals in addition to Medicaid-eligible and Kentucky Children's Health Insurance Program enrollees shall comply with the risk-based capital requirements of subsection (1) of this section and this subtitle, and shall not be eligible to calculate its risk-based capital according to this subsection.

Section 138. KRS 311A.070 is amended to read as follows:

- (1) When a complaint is filed against an ambulance service, emergency medical services provider, or an emergency medical services educational institution or an employee or volunteer thereof, or when the office of the board is contemplating action against an ambulance service, emergency medical services provider, or emergency medical services educational institution or an employee or volunteer thereof, written notice of the complaint or proposed action shall be sent to:
 - (a) The county judge/executive, in the event of a county-operated ambulance service, emergency medical services provider, or educational institution;
 - (b) The mayor, in the event of a city-operated ambulance service, emergency medical services provider, or educational institution;
 - (c) The mayor, in the event of an urban-county government-operated ambulance service, emergency medical services provider, or educational institution;
 - (d) The chairman of the fire protection district, in the event of a fire district-operated ambulance service, emergency medical services provider, or educational institution;
 - (e) The head of the public agency, in the event of an ambulance service, emergency medical services provider, or educational institution operated by a public agency other than specified in paragraphs (a) to (d) of this subsection;
 - (f) The president, chancellor, or other officer in charge of an educational institution operated, in the event of an ambulance service or educational institution;
 - (g) The chief operating officer or president of a nonprofit corporation, corporation for profit, limited liability ~~company~~~~corporation~~, or other business entity, in the event of an ambulance service, emergency medical services provider, or educational institution operated by the business entity; and
 - (h) Both the ambulance service, emergency medical services provider, or educational institution officials specified in this subsection and the officials of any public agency contracting for services.
- (2) The notice specified in this section shall be in addition to any notice provided to any other person or organization.

Section 139. KRS 313.240 is amended to read as follows:

- (1) No person shall practice or offer to practice dentistry or dental surgery under the name of any company, association, or corporation except the name of a professional service corporation established under KRS Chapter 274, *a professional limited liability company established under KRS Chapter 275, a partnership established under the Kentucky Uniform Partnership Act, or a partnership established under the Kentucky Revised Uniform Partnership Act*. Any person practicing or offering to practice dentistry or dental surgery shall practice under his own name or the name of ~~a~~~~the~~ professional service corporation, *professional limited liability company, or a partnership* which includes his name. No such person shall conduct a dental office in his name nor advertise his name in connection with any dental office unless he personally performs services as a dentist or dental surgeon in such office or personally supervises such services as are performed in such office during a portion of the time such office is operated by him only, and shall not use his name in connection with that of any other dentist.

- (2) No person shall be an incorporator, director, officer, ***member, manager,*** or shareholder in more than three (3) professional service corporations, ***three (3) professional limited liability companies, or three (3) partnerships, or any three (3) of these business entities*** rendering dental or dental surgery services. No dentist or dental surgeon or group of dentists or dental surgeons shall practice in more than three (3) locations.

Section 140. KRS 322.010 is amended to read as follows:

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

- (1) "Board" means the State Board of Licensure for Professional Engineers and Land Surveyors;
- (2) "Engineer" means a person who is qualified to engage in the practice of professional engineering by reason of special knowledge and use of:
 - (a) The mathematical, physical, and engineering sciences; and
 - (b) The principles and methods of engineering analysis and design, acquired by engineering education and practical engineering experience;
- (3) "Professional engineer" means a person who is licensed as a professional engineer by the board;
- (4) "Engineering" means any professional service or creative work, the adequate performance of which requires engineering education, training, and experience as an engineer.
 - (a) "Engineering" shall include:
 1. Consultation, investigation, evaluation, planning, certification, and design of engineering works and systems;
 - a. Engineering design and engineering work associated with design/build projects;
 - b. Engineering works and systems which involve earth materials, water or other liquids, and gases;
 - c. Planning the use of land, air, and waters; and
 - d. Performing engineering surveys and studies;
 2. The review of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces this service or work, either public or private, in connection with any utilities, structures, certain buildings, building systems, machines, equipment, processes, work systems, or projects with which the public welfare or the safeguarding of life, health, or property is concerned, when that professional service or work requires the application of engineering principles and data;
 3. The teaching of engineering design courses in any program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology or any engineering program deemed equivalent by the board;
 4. The negotiation or solicitation of engineering services on any project in this state, regardless of whether the persons engaged in the practice of engineering:
 - a. Are residents of this state;
 - b. Have their principal place of business in this state; or
 - c. Are in responsible charge of the engineering services performed; and
 5. The services of a professional engineer who engages in the practice of land surveying incident to the practice of engineering that does not relate to the location or determination of land boundaries.
 - (b) "Engineering" shall not include the professional services performed by persons who:
 1. Develop or administer construction project safety programs, construction safety compliance, construction safety rules or regulations, or related administrative regulations; or
 2. Only operate or maintain machinery or equipment;

- (5) "Practice of engineering" means the performance of any professional service included in subsection (4)(a) of this section;
- (6) "Engineer in training" means a person who has passed the Fundamentals of Engineering Examination and is otherwise qualified to earn experience toward licensure as a professional engineer;
- (7) "Responsible charge of engineering" means direct control and personal supervision of engineering, or teaching experience with the rank equivalent to assistant professor or higher in a board-approved engineering program;
- (8) "Land surveyor" means a person who is qualified to engage in the practice of land surveying by reason of special knowledge and use of mathematics, the physical and applied sciences, and the principles and methods of land surveying, acquired by education and practical experience in land surveying;
- (9) "Professional land surveyor" means a person who is licensed as a professional land surveyor by the board;
- (10) "Land surveying" means any professional service or work, the adequate performance of which requires the education, training, and experience as a land surveyor.

(a) "Land surveying" shall include, but not be limited to, the following:

- 1. Measuring and locating, establishing, or reestablishing lines, angles, elevations, natural and man-made features in the air, on the surface and immediate subsurface of the earth, within underground workings, and on the beds or surfaces of bodies of water involving the:
 - a. Determination or establishment of the facts of size, shape, topography, and acreage;
 - b. Establishment of photogrammetric and geodetic control that is published and used for the determination, monumentation, or description of property boundaries;
 - c. Subdivision, division, and consolidation of lands;
 - d. Measurement of existing improvements, including condominiums, after construction and the preparation of plans depicting existing improvements, if the improvements are shown in relation to property boundaries;
 - e. Layout of proposed improvements, if those improvements are to be referenced to property boundaries;
 - f. Preparation of physical written descriptions for use in legal instruments of conveyance or real property and property rights;
 - g. Preparation of subdivision record plats;
 - h. Determination of existing grades and elevations of roads and land;
 - i. Creation and perpetuation of alignments related to maps, record plats, field note records, reports, property descriptions, and plans and drawings that represent them; and
 - j. Certification of documents; and
- 2. The negotiation or solicitation of land surveying services on any project in this state, regardless of whether the persons engaged in the practice of land surveying:
 - a. Are residents of this state;
 - b. Have their principal office or place of business in this state; or
 - c. Are in responsible charge of the land surveying services or work performed.

(b) "Land surveying" shall not include:

- 1. The measurement of crops or agricultural land area under any agricultural program sponsored by an agency of the federal government or the state of Kentucky;
- 2. The services of a professional engineer who engages in the practice of land surveying incident to the practice of engineering, if the land surveying work does not relate to the location or determination of land boundaries; or
- 3. The design of grades and elevations of roads and land;

- (11) "Practice of land surveying" means the performance of any professional service included in subsection (10)(a) of this section;
- (12) "Land surveyor in training" means a person who has passed the Fundamentals of Land Surveying Examination and is otherwise qualified to earn experience toward licensure as a professional land surveyor;
- (13) "Responsible charge of land surveying" means direct control and personal supervision of land surveying, or teaching experience with the rank equivalent to assistant professor or higher in a board-approved land surveying program;
- (14) "Business entity" means a corporation, partnership, *limited liability company*, *limited partnership*, or firm;
- (15) "Offer to practice" means:
 - (a) A promise or commitment to engage in any act directly related to engineering or land surveying;
 - (b) Undertaking to engage in the practice of engineering or land surveying; or
 - (c) Any claim, express or implied, by any person representing himself or herself to be a professional engineer or professional land surveyor;
- (16) "Certification" means affixing a seal or stamp, signature, and date by a professional engineer or professional land surveyor to represent that the services or work addressed therein was performed by that professional engineer or professional land surveyor according to his or her knowledge, information, and belief, and that it was completed in accordance with applicable standards of practice. "Certification" shall not mean a guaranty or warranty, either express or implied;
- (17) The "Fundamentals of Engineering Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying;
- (18) The "Fundamentals of Land Surveying Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying;
- (19) The "Principles and Practice of Engineering Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying; and
- (20) The "Principles and Practice of Land Surveying Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying.

Section 141. KRS 322.060 is amended to read as follows:

- (1) (a) A business entity shall not engage in the practice of engineering in this state unless:
 - 1. At least one (1) of its principals, officers, or a designated employee is a professional engineer who is in responsible charge of the engineering work; and
 - 2. The board has issued a permit to the business entity.
- (b) To apply for a permit, a business entity offering engineering services in this state shall file with the board, on a form prescribed by the board:
 - 1. The names and addresses of all principals and officers;
 - 2. The license number of principals, officers, and employees who are professional engineers in responsible charge of the business entity's practice of engineering in this state;
 - 3. A list of locations of all offices in this state at which the business entity offers professional engineering services;
 - 4. A statement of qualifications for the permit; and
 - 5. References as required by administrative regulations promulgated by the board.
- (c) If more than one (1) place of business is maintained in this state, a professional engineer shall be in responsible charge of the engineering work for each office.

- (d) A professional engineer who renders occasional, part-time, or consulting engineering services to or for a business entity required to hold a permit from the board under this section shall not be designated as the person in responsible charge of the engineering work.
 - (e) A business entity holding a permit shall advise the board in writing within thirty (30) days of any change of status in those items listed in paragraph (b) of this subsection.
 - (f) Individual professional engineers providing engineering services in their own names, or architectural firms offering engineering services incident to their practice, shall be excluded from the provisions of this subsection.
- (2) (a) A business entity shall not engage in the practice of land surveying in this state unless:
- 1. At least one (1) of its principals, officers, or a designated employee is a professional land surveyor in direct responsible charge of the land surveying work; and
 - 2. The board has issued a permit to the business entity.
- (b) To apply for a permit, a business entity offering land surveying services in this state shall file with the board, on a form prescribed by the board:
- 1. The names and addresses of all principals and officers;
 - 2. The license numbers of the principals, officers, and employees who are professional land surveyors in responsible charge of the practice of land surveying in this state;
 - 3. A list of locations of all offices in this state at which the business entity offers professional land surveying services;
 - 4. A statement of qualifications for the services relating to the permit; and
 - 5. References as required by administrative regulations promulgated by the board.
- (c) If more than one (1) place of business is maintained in this state, a professional land surveyor shall be in responsible charge of the land surveying work for each office.
- (d) A professional land surveyor who renders occasional, part-time, or consulting services to or for a business entity required to hold a permit from the board under this section shall not be designated as the person in responsible charge of the land surveying activity of the firm.
- (e) A business entity holding a permit shall advise the board in writing within thirty (30) days of any change of status.
- (f) Individual professional land surveyors providing land surveying services in their own names shall be excluded from the provisions of this subsection.
- (3) (a) After a business entity applies for a professional engineering or professional land surveying permit and pays the proper fees, the board shall review the application and, upon approval, shall issue a permit.
- (b) The board may suspend, revoke, or refuse to issue a permit for violation of the code of professional practice and conduct.
- (c) The expiration date and renewal period for each permit and renewal procedures shall be established by administrative regulations promulgated by the board.
- (4) (a) No business entity shall be relieved of responsibility for the conduct or acts of its agent, employees, or officers by reason of its compliance with this section.
- (b) No individual practicing professional engineering or professional land surveying shall be relieved of the responsibility for professional services performed by reason of the individual's employment or relationship with a business entity holding a permit under this section.
- (5) Disciplinary action against a business entity holding a permit under this section shall be administered in the same manner and on the same grounds as disciplinary action against an individual professional engineer or professional land surveyor.
- (6) The Secretary of State shall not ~~accept articles of incorporation, articles of organization, statement of qualification or certificate of limited partnership or an application for a certificate of authority to transact business~~ ~~issue a certificate of~~ ~~registration~~ of incorporation, **articles of organization, statement of qualification or certificate of limited partnership or an application for a certificate of authority to transact business** as a foreign corporation, **limited liability company or limited partnership or**

a statement of foreign qualification from a business entity~~[authorized to do business in this state to a firm]~~ which includes in its name or, among objects for which it is established, any of the words, "engineer," "engineering," "surveyor," "surveying," "land surveying," or any modification or derivation thereof, unless the ***filing***~~[application for incorporation or registration]~~ with the Secretary of State includes a certificate or letter from the board.

Section 142. KRS 362.401 is amended to read as follows:

As used in KRS 362.403 to 362.525, unless the context otherwise requires, the term:

- (1) "Certificate of limited partnership" means the certificate referred to in KRS 362.415, or the certificate of limited partnership as amended or restated.
- (2) ***"Business entity" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, business or statutory trust and not-for-profit unincorporated association.***
- (3) "Contribution" means any cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.
- ~~(4)~~~~(3)~~ "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in KRS 362.445.
- ~~(5)~~~~(4)~~ "Foreign limited partnership" means a limited partnership formed under the laws of any state other than this state and having as partners one (1) or more general partners and one (1) or more limited partners.
- ~~(6)~~~~(5)~~ "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and is named in the certificate of limited partnership as a general partner.
- ~~(7)~~~~(6)~~ "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.
- ~~(8)~~~~(7)~~ "Limited partnership" or "domestic limited partnership" means a partnership formed by two (2) or more persons under the laws of this state and having one (1) or more general partners and one (1) or more limited partners.
- (9) ***"Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity.***
- ~~(10)~~~~(8)~~ "Partner" means a limited partner or general partner.
- ~~(11)~~~~(9)~~ "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.
- ~~(12)~~~~(10)~~ "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.
- ~~(13)~~~~(11)~~ "Person" means a natural person;~~[partnership; limited partnership, which is either domestic or foreign;]~~ trust; estate; ***or business entity***~~[association; or corporation].~~
- (14) ***"Real name" shall have the meaning set forth in Section 164 of this Act.***
- ~~(15)~~~~(12)~~ "State" means a state, territory, or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

Section 143. KRS 362.403 is amended to read as follows:

The name of each limited partnership as set forth in its certificate of limited partnership:

- (1) Shall contain the word "Limited" or its abbreviation, "Ltd.";
- (2) Shall not contain the name of a limited partner unless:
 - (a) That name is also the name of a general partner or the corporate name of a corporate general partner; or
 - (b) The business of the limited partnership had been carried on under that name before the admission of that limited partner; and

- (3) Shall ~~not be the same as, and shall~~ be distinguishable *from any name of record with the Secretary of State* ~~upon the records of the Secretary of State from, the name of any corporation or limited partnership organized under the laws of this state, or licensed or registered as a foreign corporation or foreign limited partnership in this state, or any assumed name which is registered with the Secretary of State or a name which at that time is reserved by another person under the laws of this state~~.

Section 144. KRS 362.405 is amended to read as follows:

- (1) The exclusive right to the use of a name may be reserved by:
 - (a) Any person intending to organize a limited partnership under KRS 362.403 to 362.525 and to adopt that name;
 - (b) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;
 - (c) Any foreign limited partnership intending to register in this state and adopt that name; or
 - (d) Any person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.
- (2) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic limited partnership or foreign limited partnership, it shall reserve the name for the exclusive use of the applicant for a nonrenewable period of one hundred twenty (120) days. The right to the exclusive use of a reserved name may be transferred to any other person by filing with the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee. *During the thirty (30) days prior to the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.*
- (3) *The holder of a reserved 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 145. KRS 362.555 is amended to read as follows:

- (1) To become and to continue as a registered limited liability partnership, a partnership *that is not a limited partnership* shall file with the Secretary of State a statement or a renewal statement, as the case may be, stating the name of the partnership; the address of its principal office; the number of partners; the names of the partners; a brief statement of the business in which the partnership engages; and that the partnership registers its status or renews its status, as the case may be, as a registered limited liability partnership.
- (2) The statement or renewal statement shall be executed by a majority in interest of the partners or by one (1) or more partners authorized to execute a statement or renewal statement.
- (3) The statement or renewal statement shall be accompanied by a fee of two hundred dollars (\$200).
- (4) The Secretary of State shall register as a registered limited liability partnership, and shall renew the registration of any registered limited liability partnership, any partnership that submits a completed statement or renewal statement with the required fee.
- (5) Registration shall be effective for one (1) year after the date a statement is filed, unless voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by a majority in interest of the partners or by one (1) or more partners authorized to execute a withdrawal notice. Registration, whether pursuant to an original statement or a renewal statement, as a registered limited liability partnership shall be renewed if, during the sixty (60) day period preceding the date the statement or renewal statement otherwise would have expired, the partnership files with the Secretary of State a renewal statement. Registration pursuant to a renewal statement shall expire one (1) year after the date the registration would have expired if the last renewal of the registration had not occurred.
- (6) The status of a partnership as a registered limited liability partnership shall not be affected by changes made in the information stated in the statement or renewal statement after the filing of the statement or renewal statement.

- (7) The Secretary of State may provide forms for use under this section.

Section 146. KRS 362.595 is amended to read as follows:

- (1) The failure of a registered limited liability partnership to comply with any requirements of KRS 362.555 shall not impair the validity of any contract, deed, mortgage, security interest, lien, or act of the registered limited liability partnership or prevent the registered limited liability partnership from defending any action, suit, or proceeding in any court of this Commonwealth.
- (2) Subject to subsection (3) of this section, the protection from liability of a partner of a registered limited liability partnership under KRS 362.220(2) shall not be altered by reason of the failure of the partnership to comply with any requirements of KRS 362.555.
- (3) A partner in a partnership which has previously filed a statement under KRS 362.555, and which has failed to comply with the renewal statement requirements of KRS 362.555, shall not be entitled to protection from liability under KRS 362.220(2) in any action or proceeding brought by any person who did business with the partnership during the period it failed to comply and who did not at that time have actual knowledge that it was a limited liability partnership.

~~[(4) A foreign limited liability partnership, by transacting business in this Commonwealth, shall be deemed to appoint 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.]~~

Section 147. KRS 362.1-109 is amended 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) Statement of Partnership Authority	\$40.00
(b) Statement of Denial	\$20.00
(c) Statement of Dissociation	\$20.00
(d) Statement of Dissolution	\$40.00
(e) Statement of Merger	\$40.00
(f) Statement of Qualification	\$40.00
(g) Amendment to a Statement of Qualification	\$40.00
(h) Statement of Foreign Qualification	\$90.00
(i) Reinstatement of a Statement of Qualification	\$100.00
(j) Change of Registered Agent or Change of the Address of the Registered Office, or Both	\$10.00
(k) Registered Agent's Statement of Change of Registered Office for Each Affected Partnership	\$10.00
<i>not to exceed a total of.....</i>	<i>\$1,000.00</i>
(l) Change of the Mailing Address of the Chief Executive Office	\$10.00
(m) Application to Reserve a Name for Use by a Domestic or Foreign Partnership	\$15.00
(n) Notice of the Transfer of a Name Reserved for Use by a Domestic or Foreign Partnership	\$15.00
(o) Application for Registered Name	\$36.00
(p) Application for Renewal of Registered Name	\$36.00
(q) Annual report.....	\$15.00

- (r) Amendment to the annual report\$10.00
- (s) All other filings \$40.00
- (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 148. KRS 362.1-115 is amended 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 ~~at one (1) nonrenewable~~ period of one hundred twenty (120) days. ***During the thirty (30) days prior to the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.***
- (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 149. KRS 362.1-504 is amended to read as follows:

- (1) ***This section provides the exclusive remedy by which the judgment creditor of a partner or the transferee of a partner may satisfy a judgment out of the judgment debtor's transferable interest.***
- (2) On application ~~to a court of competent jurisdiction~~ 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 ***with payment of the unsatisfied amount of*** ~~to satisfy~~ the judgment. ***To the extent so charged, the judgment creditor has only the rights of a transferee and*** ~~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 ***to give effect to the charging order.***
- ~~(3)(2)~~ A charging order constitutes a ***lien on and the*** right to receive distributions made with respect to the judgment debtor's transferable interest in the partnership.
- (4) 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. ***A charging order does not of itself constitute an assignment of the transferable interest.***
- ~~(5)(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 (1) 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.
- ~~(6)(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 150. KRS 362.1-802 is amended 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 KRS 362.1-804(1) or arising out of conduct in reliance on the dissolution before the third party has notice of the waiver shall not be adversely affected.
- (3) ***The dissolution of a partnership that is or was a limited liability partnership shall not abate or suspend KRS 362.1-306(3).***

Section 151. KRS 362.1-1104 is amended to read as follows:

- (1) Activities of a foreign limited liability partnership which do not constitute transacting business for the purposes of KRS 362.1-1001 to 362.1-1103 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 KRS 362.1-1101 to 362.1-1105, 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. ***The term "transacting business" as used in this section shall have no effect on personal jurisdiction under KRS 454.210.***

Section 152. KRS 362.2-109 is amended 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 ~~a one (1) nonrenewable~~ period of one hundred twenty (120) days. ***During the thirty (30) days prior to the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by***

the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.

- (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 153. KRS 362.2-119 is amended 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 *or renew the reservation of* 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 154. KRS 362.2-121 is amended 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) *A person who executes a record to be filed with the Secretary of State shall be deemed to have declared under penalty of perjury that to that person's knowledge the contents of the statement are accurate.*

- (9) (a) *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.*
- (b) *Any person who violates the provisions of this subsection shall be guilty of an offense punishable by a fine not to exceed one hundred dollars (\$100).*
- (10) If the Secretary of State has prescribed a mandatory form for a record, then the record shall be in or on the prescribed form.
- ~~(11)(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.
- ~~(12)(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.
- ~~(13)(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 155. KRS 362.2-210 is amended 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 KRS 362.2-115.
- (5) *A limited partnership or foreign limited 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 156. KRS 362.2-703 is amended to read as follows:

- (1) *This section provides the exclusive remedy by which the judgment creditor of a partner or the transferee of a partner may satisfy a judgment out of the judgment debtor's transferable interest.*

- (2) On application to a court of competent jurisdiction by any judgment creditor of a partner or *a partner's* 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, ***and shall have no right to participate in the management 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 to give effect to the charging order.
- (3)~~(2)~~ A charging order constitutes a lien on ***and the right to receive distributions made with respect to*** the judgment debtor's transferable interest. ***A charging order does not of itself constitute an assignment of the transferable interest.***
- (4) The court may order a foreclosure upon the ***transferable*** interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.
- (5)~~(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 (1) 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.
- (6)~~(4)~~ This subchapter does not deprive any partner or *a partner's* 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 157. KRS 362.2-803 is amended 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 KRS 362.2-203, 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 KRS 362.2-804; 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.

- (5) ***The dissolution of a limited partnership shall not abate or suspend KRS 362.2-303, and the dissolution of a limited partnership that is a limited liability limited partnership shall not abate or suspend KRS 362.2-404(3).***

Section 158. KRS 362.2-901 is amended 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, ***including the inspection of books, records and documents***, 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 159. KRS 362.2-903 is amended to read as follows:

- (1) Activities of a foreign limited partnership which do not constitute transacting business in this Commonwealth within the meaning of KRS 362.2-901 to 362.2-908 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) ***Owning, without more, real or personal property;***
 - (j) 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
 - (k)(j) Transacting business in interstate commerce.
- (2) ***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 partnership to service of process, taxation, or regulation under any other law of this Commonwealth.***
- (3) ***The term "transacting business" as used in this section shall have no effect on personal jurisdiction under KRS 454.210.***~~For purposes of KRS 362.2-901 to 362.2-908, 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 160. KRS 362.2-906 is amended to read as follows:

The Secretary of State may commence a proceeding under KRS 362.2-907 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 **limited partnership**~~[corporation]~~ is **organized**~~[incorporated]~~ stating that it has been dissolved or disappeared as the result of a merger.

Section 161. KRS 362.2-1104 is amended to read as follows:

- (1) After a plan of conversion **of a limited liability company into a limited partnership** 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;
 - ~~(d)}~~~~(e)}~~ A statement that the conversion was approved as required by the governing statute of the converted limited liability company; and
 - ~~(e)}~~~~(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 KRS 362.2-1105(3).
- (2) A conversion of a limited liability company into a limited partnership becomes effective when the certificate of limited partnership takes effect.

Section 162. KRS 362.2-1108 is amended 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 ~~and~~~~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 163. 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 KRS 362.1-1001 or predecessor law;
 - 4. Limited partnership is that name stated in its certificate of limited partnership filed pursuant to KRS 362.2-201 or predecessor law;
 - 5. Business trust is the name set forth in the declaration of trust;
 - 6. Corporation is the name set forth in its articles of incorporation; and
 - 7. 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 KRS 362.1-1102 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 KRS 362.2-905 or predecessor law;
 - 4. Business trust is the name recognized by the laws of the jurisdiction under which it is formed as being the real name of the business trust;
 - 5. Corporation is the name set forth in its articles of incorporation or the fictitious name adopted for use in this Commonwealth under KRS 271B.15-060; and
 - 6. Limited liability company is the name set forth in its articles of organization or the fictitious name adopted for use in this Commonwealth under KRS 275.410.
- (2) (a) No individual, general partnership, limited partnership, business trust, corporation, or limited liability company shall conduct or transact business in this Commonwealth 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, 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; 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 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. Each certificate of assumed name for a general 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. 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 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 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 by at least one (1) partner authorized to act for the partnership, for a limited partnership by a general partner, for a business trust by a trustee, 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 ~~or~~~~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 164. KRS 386.370 is amended to read as follows:

- (1) A business trust is an express trust created by a written declaration of trust whereby property is conveyed to one (1) or more trustees, who hold and manage same for the benefit and profit of such persons as may be or become, the holders of transferable certificates evidencing the beneficial interest in the trust estate. For the purposes of KRS 386.370 to 386.440, business trusts shall include but are not limited to "Real Estate Investment Trusts" as defined by and which comply with the Federal Internal Revenue Code of ~~1986~~~~1954~~ as amended or such section or sections of any subsequent Internal Revenue Code as may be applicable to real estate investment trusts.
- (2) ***"Business entity" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, business or statutory trust, and not-for-profit unincorporated association;***
- (3) ***"Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity.***

Section 165. KRS 386.410 is amended to read as follows:

~~[Any business trust which exists under the laws of any foreign state and which are valid in said state shall be valid in the Commonwealth of Kentucky if they comply with the terms of KRS 386.390 to 386.440.]~~ No beneficial owner of certificates in a foreign business trust shall have his interests therein assessed and no beneficial owner of a foreign trust shall be personally liable for any debts or liabilities incurred by the trustees or by the foreign business trust after June 16, 1966.

Section 166. KRS 386.420 is amended to read as follows:

- (1) The written declaration of trust may provide for the election of successor trustees in the event of the death, resignation and removal of a trustee and may provide for the amendment of the declaration of trust. The declaration of trust may also contain such other provisions regarding the operating and administration of the business trust as may be necessary or desirable.
- (2) ***A declaration of trust filed on or after the effective date of this Act shall name or shall be accompanied by a document naming the initial registered agent and registered office conforming to Section 20 of this Act.***
- (3) The declaration of trust shall be recorded in the office of the Secretary of State of the Commonwealth of Kentucky and in the office of the county clerk in the county in which its principal place of business is located and a recording charge of \$15 shall be paid at each of those offices.

Section 167. KRS 386.440 is amended to read as follows:

~~[(1)—]A business trust may be sued for debts and other obligations incurred by the trustees in the performance of their duties under the declaration of trust, and for any damages resulting from the negligence of such trustees and its property shall be subject to attachment and execution in like manner as if it were a corporation.~~

~~[(2)—Any foreign business trust doing business in this state must file with the Secretary of State of the Commonwealth of Kentucky the name of its agent in this state upon whom process may be served in any civil action instituted in the courts of this state.]~~

Section 168. KRS 275.090 is amended to read as follows:

- (1) It shall be unlawful for any person to sign a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.
- (2) Any person who violates the provisions of this section shall be guilty of ***an offense***~~[a Class B misdemeanor]~~ punishable by a fine not to exceed one hundred dollars (\$100).

Section 169. KRS 362.1-105 is amended 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)
 - (a) 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.
 - (b) Any person who violates this subsection shall be guilty of *an offense*~~[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) 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 170. KRS 362.575 is amended to read as follows:

- (1) A registered limited liability partnership, formed and existing under KRS 362.155, 362.175, 362.190, 362.220, 362.235, 362.315, 362.325, 362.345, and KRS 362.555 to 362.605, may conduct its business, carry on its operations, and have and exercise the powers granted by KRS 362.155, 362.175, 362.190, 362.220, 362.235,

362.315, 362.325, 362.345, and KRS 362.555 to 362.605 in any state, territory, district, or possession of the United States or in any foreign country.

- (2) It is the intent of the General Assembly that the legal existence of any registered limited liability partnership formed and existing under KRS 362.155, 362.175, 362.190, 362.220, 362.235, 362.315, 362.325, 362.345, and KRS 362.555 to 362.605 shall be recognized outside the boundaries of this Commonwealth and that the laws of this Commonwealth governing any registered limited liability partnership transacting business outside this Commonwealth shall be granted the protection of full faith and credit under the Constitution of the United States.
- (3) It is the policy of this Commonwealth that the internal affairs of registered limited liability partnerships, formed and existing under KRS 362.155, 362.175, 362.190, 362.220, 362.235, 362.315, 362.325, 362.345, and KRS 362.555 to 362.605, including the liability of partners for debts, obligations, and liabilities chargeable to partnerships, shall be subject to and governed by the laws of this Commonwealth.
- (4) Subject to any statutes for the regulation and control of specific types of business~~—and subject to KRS 362.585,~~ limited liability partnerships, formed and existing under the laws of another state or jurisdiction, may engage in any business in this Commonwealth.
- (5) It is the policy of this Commonwealth that the internal affairs of partnerships, including limited liability partnerships, formed and existing under the laws of another state or jurisdiction, including the liability of partners for debts, obligations, and liabilities chargeable to partnerships, shall be subject to and governed by the laws of that other state or jurisdiction.

Section 171. KRS 45.560 is amended to read as follows:

As used in KRS 45.570 to 45.640, unless the context requires otherwise:

- (1) "Contract" means any binding legal relationship between the Commonwealth of Kentucky and a contractor for supplies and services, including construction, or for the use of Commonwealth property, in which the parties, respectively, do not stand in the relationship of employer and employee.
- (2) "Contractor" means any prime contractor holding a contract with the Commonwealth of Kentucky government, and shall include subcontractors when the context so indicates.
- (3) "Contracting agency" means the person or persons, board, commission, court, council, governing body, employee, or official which is authorized by law to purchase or contract for supplies, materials, services, or equipment for the state.
- (4) "Subcontractor" means any person, including a corporation, partnership, or business association of any kind, who holds an agreement or purchase order to perform all or any part of the work or to make or furnish any article or service required for the performance of a negotiated contract or of a subcontract entered thereunder.
- (5) "Cabinet" means the Finance and Administration Cabinet.
- (6) ***"Equal employment opportunity job categories" means the major employment classifications described by the United States Equal Employment Opportunity Commission.***

Section 172. KRS 45.570 is amended to read as follows:

- (1) Except in contracts exempted in accordance with KRS 45.590, all government contracting agencies of the Commonwealth of Kentucky, any county, city, town, school district, water district, hospital district, or other political subdivision of the state shall include in every directly or indirectly publicly funded contract for supplies, materials, services, or equipment hereinafter entered into the following provisions:
- (2) During the performance of this contract, the contractor agrees as follows:
 - (a) The contractor ~~shall~~~~will~~ not discriminate against any employee or applicant for employment because of race, color, religion, sex, age ***forty (40) and over, disability, veteran status,*** or national origin;
 - (b) The contractor ~~shall~~~~will~~ take affirmative action in regard to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, so as to ensure that applicants are employed and that employees during employment are treated without regard to their race, color, religion, sex, age ***forty (40) and over, disability, veteran status,*** or national origin~~;~~ ~~however, when layoffs occur, employees~~

~~shall be laid off according to seniority with the youngest employee being laid off first. When employees are recalled, this shall be done in the reverse of the way the employees were laid off;~~

- (c) The contractor ~~shall~~~~will~~ state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants ~~shall~~~~will~~ receive consideration for employment without regard to race, color, religion, sex, age **forty (40) and over, disability, veteran status,** or national origin;
- (d) The contractor ~~shall~~~~will~~ post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of the nondiscrimination clauses required by this section; and
- (e) The contractor ~~shall~~~~will~~ send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses.

Section 173. KRS 45.590 is amended to read as follows:

A contractor or subcontractor otherwise subject to the provisions of KRS 45.570 is exempt as to any affirmative action or reporting requirements if:

- (1) The contract or subcontract awarded is in the amount of **five hundred thousand dollars (\$500,000)**~~(\$250,000)~~ or less, and the amount of the contract is not a subterfuge to avoid compliance with the provisions of KRS 45.560 to 45.640;
- (2) The contractor or subcontractor utilizes the services of fewer than eight (8) employees during the course of the contract;
- (3) The contractor or subcontractor employs only family members or relatives;
- (4) The contractor or subcontractor employs only persons having a direct ownership interest in the business, and such interest is not a subterfuge to avoid compliance with the provisions of KRS 45.560 to 45.640; **or**
- (5) ***The subcontract is below the second-tier level of contracts.***

Section 174. KRS 45.600 is amended to read as follows:

- (1) Any party not otherwise exempted by KRS 45.590 and intending to submit a bid on any contract covered by the provisions of KRS 45.560 to 45.640 shall within a **time frame set by the contracting agency in the bid documents**~~reasonable period of time as determined by the Finance and Administration Cabinet~~ submit to the contracting agency~~and the cabinet~~ upon being declared the successful bidder:
 - (a) A statement of intent to comply in full with all requirements of the Kentucky Civil Rights Act, and to submit data required by KRS 45.560 to 45.640 upon being designated the successful bidder.
 - (b) A breakdown of the bidding party's existing work force, indicating the race, **ethnicity, gender, and equal employment opportunity job category**~~sex, age, position held, county and state of residence, and date of employment~~ of each employee.
 - (c) ***A breakdown of subcontracts valued at five hundred thousand dollars (\$500,000) or more, indicating specific items of work on the contract for which the contractor has submitted or intends to submit a bid to the Commonwealth of Kentucky.***

The reports~~This report~~ shall be submitted in a manner as shall be prescribed by the cabinet and on forms devised by the cabinet and supplied by the contracting agency.

- (2) Within ten (10) days after the receipt of ***the reports***~~this report~~, the cabinet shall determine whether the bidding party's work force is reflective of the percentage of available minorities **and women** in the area from which the bidding party's employees are drawn. If a determination is made that the bidding party's work force is reflective of the percentage of available minorities **and women** in this drawn area, the bidding party shall be "certified" and be thereby qualified to bid on any contract covered by KRS 45.560 to 45.640 without filing additional data for a period of **one (1) year**~~six (6) months~~.
- (3) If it is determined by the cabinet that the bidding party's work force reflects an underutilization of minorities **or women**, the bidding party and contracting agency shall be so notified, and no certification shall be issued. The bidding party shall then have the option of filing with the contracting agency and the cabinet, an affirmative action program, indicating goals and timetables for recruiting and hiring minorities **or women** throughout the

contractors' work force. The cabinet shall be available, upon the request of any contractor, to furnish technical assistance in fulfilling the requirements of KRS 45.560 to 45.640.

- (4) If the bidding party is subsequently awarded the contract being sought, failure to comply with the goals and timetables set forth in the affirmative action plan shall be an unlawful practice under KRS 45.560 to 45.640 and shall constitute a material breach of the contract.
- (5) If the cabinet determines that the submitted affirmative action program does not fulfill the provisions of KRS 45.560 to 45.640, the bidding party and contracting agency shall be so notified, and no certification shall be granted.
- (6) If the bidding party's work force is not reflective of the percentage of minorities **or women** in the drawing area and ~~the bidding party~~ has complied with all other affirmative action requirements in KRS 45.560 to 45.640, ~~the bidding party~~ may certify by verified affidavit that ~~the bidding party~~ has made every reasonable effort to comply with said percentage requirements, and ~~the bidding party~~ shall thereafter be entitled to all the benefits of KRS 45.560 to 45.640.

Section 175. KRS 45.610 is amended to read as follows:

- (1) For the length of the contract, each contractor shall hire minorities **and women** from other sources within the drawing area, should the union with which he has collective bargaining agreements be unwilling to supply sufficient minorities **or women** to satisfy the agreed upon goals and timetables.
- (2) Each contractor shall, for the length of the contract, furnish such information as required by KRS 45.560 to 45.640 and by such rules, regulations, and orders issued pursuant thereto and will permit access to all books and records pertaining to his employment practices and work sites by the contracting agency and the cabinet for purposes of investigation to ascertain compliance with KRS 45.560 to 45.640 and such rules, regulations, and orders issued pursuant thereto.

Section 176. KRS 45.620 is amended to read as follows:

- (1) ***The Finance and Administration Cabinet may investigate the employment practices of any contractor or subcontractor to determine if any of the provisions of KRS 45.560 to 45.640 have been violated.*** If any contractor is found by the cabinet to have engaged in an unlawful practice under ***KRS 45.560 to 45.640***~~[this chapter]~~ during the course of performing under a contract or subcontract covered under KRS 45.560 to 45.640, the cabinet shall so certify to the contracting agency and such certification shall be binding upon the contracting agency unless it is reversed in the course of judicial review.
- (2) If the contractor is found to have committed an unlawful practice under KRS 45.560 to 45.640, the contracting agency may cancel or terminate the contract, conditioned upon a program for future compliance approved by the contracting agency and the cabinet. The contracting agency may declare such a contractor ineligible to bid on further contracts with that agency until such time as the contractor complies in full with the requirements of KRS 45.560 to 45.640.
- (3) The equal employment provisions of KRS 45.560 to 45.640 may be met in part by a contractor by subcontracting to a minority **or woman** contractor or subcontractor. For the provisions of KRS 45.560 to 45.640, a minority **or woman** contractor or subcontractor shall mean a business that is owned and controlled by one (1) or more persons disadvantaged by racial,~~or~~ ethnic, **or gender** circumstances.

Section 177. KRS 45.630 is amended to read as follows:

Any provision of KRS 45.560 to 45.640 notwithstanding, no contractor shall be required to terminate an existing employee~~[, upon proof that that employee was employed prior to the date of the contract]~~.

SECTION 178. A NEW SECTION OF KRS 45.560 TO 45.640 IS CREATED TO READ AS FOLLOWS:

The Finance and Administration Cabinet may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to carry out the provisions of KRS 45.560 to 45.640.

Section 179. The General Assembly finds and declares that the amendment of KRS 271B.6-210, 271B.6-230, 271B.7-040, 271B.7-280, and 271B.8-080, as provided for in 2002 Ky. Acts, ch. 102, secs. 10, 11, 15, 18, and 19 respectively, are and were effective as of November 15, 2002.

Section 180. 2006 Ky. Acts ch. 149, sec. 239 is repealed.

Section 181. The following KRS sections are repealed:

274.087 Merger or consolidation.

362.495 Law governing foreign limited partnerships. (Effective until January 1, 2008)

362.497 Registration of foreign limited partnership. (Effective until January 1, 2008)

362.499 Filing of application by foreign limited partnership. (Effective until January 1, 2008)

362.501 Name under which foreign limited partnership must register. (Effective until January 1, 2008)

362.503 Changes and amendment. (Effective until January 1, 2008)

362.505 Cancellation of registration of foreign limited partnership. (Effective until January 1, 2008)

362.507 Registration required for access to courts -- Effects of failure to register. (Effective until January 1, 2008)

362.509 Action by Attorney General to restrain foreign limited partnership from transacting business. (Effective until January 1, 2008)

362.585 Registration of foreign limited liability partnership -- Effect of withdrawal -- Injunctive action by Attorney General. (Effective until January 1, 2008)

Section 182. KRS 248.707 is amended to read as follows:

- (1) The Agricultural Development Board is created as a political subdivision of the Commonwealth to perform essential governmental and public functions by administering funds to provide economic assistance to the agriculture community of the Commonwealth. The board shall be a public agency within the meaning of KRS 61.805, 61.870, and other applicable statutes.
- (2) The board shall consist of **sixteen (16)**~~fifteen (15)~~ members as follows:
 - (a) **Five (5)**~~Four (4)~~ voting members or their designees, as follows:
 1. The Governor of the Commonwealth of Kentucky, who shall serve as chair;
 2. The Commissioner of the Kentucky Department of Agriculture, who shall serve as vice chair and shall serve as chair in the absence of the Governor;
 3. The secretary of the Cabinet for Economic Development;~~and~~
 4. The director of the **University of Kentucky** Cooperative Extension Service; and
 5. **The president of Kentucky State University; and**
 - (b) Eleven (11) voting members appointed by the Governor, who shall be geographically distributed throughout the state and subject to confirmation by the House of Representatives and Senate as provided in KRS 11.160(2). The members shall be as follows:
 1. Seven (7) active farmers, at least four (4) of whom shall be from counties that are substantially tobacco-impacted, as determined by a formula that includes tobacco income as a percentage of total personal income in the county, and at least two (2) of whom shall have experience in agricultural diversification;
 2. One (1) representative of the Kentucky Farm Bureau;
 3. One (1) representative of the Kentucky Chamber of Commerce, who shall be an agribusiness person;
 4. One (1) attorney with farm experience and familiarity with agricultural policy; and
 5. One (1) agricultural lender.
- (3) The members appointed under subsection (2)(b)2. and 3. of this section shall be chosen from a list of three (3) nominees submitted to the Governor by each of the respective organizations.
- (4) Consideration shall be given to racial and gender equity in the appointment of board members.
- (5) The majority of the voting members shall be active farmers.
- (6) Members of the board shall be reimbursed for expenses incurred in the performance of their duties.

- (7) Except as provided in paragraphs (a) to (d) of this subsection, the terms of the members appointed by the Governor shall be for four (4) years and until their successors are appointed and confirmed. A vacancy on the board shall be filled for the remainder of the unexpired term in the same manner as the original appointment. Members may be reappointed. The initial appointments shall be for staggered terms, as follows:
- (a) Two (2) members shall be appointed for one (1) year;
 - (b) Three (3) members shall be appointed for two (2) years;
 - (c) Three (3) members shall be appointed for three (3) years; and
 - (d) Three (3) members shall be appointed for four (4) years.
- (8) The Governor shall convene the first meeting of the board by August 1, 2000.
- (9) The board shall meet monthly, or at the call of the chair or a majority of the voting members.
- (10) A quorum of the board shall consist of **nine (9)**~~eight (8)~~ voting members. A majority of the voting members present may act upon matters before the board.
- (11) The board shall be attached to the Office of the Governor for administrative purposes.

Approved April 5, 2007.

CHAPTER 138

(HB 230)

AN ACT relating to the operation of school buses.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 281A IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "cellular telephone" means a cellular, analog, wireless, or digital telephone.*
- (2) *A person shall not operate a school bus, as defined in KRS 281A.010, on any highway while using a cellular telephone while the bus is in motion and transporting one (1) or more children, except for communications made to and from a central dispatch, school transportation department, or its equivalent when the bus is not equipped with a functioning two-way radio.*
- (3) *Notwithstanding subsection (2) of this section, a person operating a school bus shall be allowed to use a cellular telephone in the event of a bona fide emergency.*

Section 2. KRS 281A.190 is amended to read as follows:

- (1) A person who holds or is required to hold a CDL shall be disqualified from driving a commercial motor vehicle for a period of one (1) year if convicted of:
 - (a) Driving or being in physical control of a motor vehicle under the influence of alcohol or a controlled substance;
 - (b) Driving or being in physical control of a motor vehicle while the alcohol concentration of the person's blood or breath or urine is four hundredths (0.04) or more;
 - (c) Leaving the scene of an accident involving a motor vehicle driven by a person who holds or is required to hold a CDL;
 - (d) Using a motor vehicle in the commission of any felony listed in KRS 186.560;
 - (e) Refusing to submit to testing as required by KRS 281A.220 when driving a motor vehicle;
 - (f) Committing a first violation of driving a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled, or when the person is disqualified from operating a commercial motor vehicle; or
 - (g) Causing a fatality through negligent or criminal operation of a commercial motor vehicle.

- (2) A person who holds or is required to hold a CDL shall be disqualified for life if convicted of two (2) or more violations of any of the offenses specified in subsection (1) of this section or any combination of those offenses, arising from two (2) or more separate incidents. The provisions of this subsection shall only apply to convictions that occurred after the disqualification dates established by the Federal Motor Carrier Safety Administration. The Transportation Cabinet shall set forth those dates in an administrative regulation promulgated pursuant to KRS Chapter 13A.
- (3) If any violation specified in subsection (1) of this section occurred while transporting a hazardous material required to be placarded, the person who holds or is required to hold a CDL shall be disqualified for a period of three (3) years.
- (4) Notwithstanding any other provisions of law, a period of suspension, revocation, or disqualification imposed under the provisions of this chapter shall not be reduced. However, in accordance with the provisions of Title 49, Code of Federal Regulations, Part 383, the cabinet may establish guidelines including conditions under which a disqualification of not less than ten (10) years may be imposed.
- (5) A person who holds or is required to hold a CDL shall be disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.
- (6) A person who holds or is required to hold a CDL shall be disqualified from driving a commercial motor vehicle for a period of sixty (60) days if convicted of two (2) serious traffic violations, or one hundred twenty (120) days if convicted of three (3) serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three (3) year period.
- (7) A person who holds or is required to hold a CDL shall be disqualified for the first offense from driving a commercial motor vehicle for six (6) months if the person has been convicted of committing any of those offenses enumerated in KRS 186.610 involving a commercial motor vehicle, commercial driver's license, or application for that license. For the second and each subsequent offense, the person shall be disqualified from operating a commercial motor vehicle for a period of one (1) year.
- (8) The cabinet shall deny a person a commercial driver's license or shall suspend, revoke, or cancel his commercial driving privilege, subject to a hearing conducted in accordance with KRS 189A.107, when the cabinet has reason to believe that the person refused to submit to a test to determine his alcohol concentration while driving a commercial motor vehicle.
- (9) If a person who holds or is required to hold a CDL is convicted of any of the railroad crossing offenses or conduct enumerated in KRS 189.500, 189.560, and 189.565, then the person shall be disqualified from operating a commercial motor vehicle for a period of:
 - (a) Sixty (60) days for the first offense;
 - (b) One hundred twenty (120) days for the second offense within a three (3) year period; and
 - (c) One (1) year for the third or subsequent offense within a three (3) year period.
- (10) If a person who holds or is required to hold a CDL violates an out-of-service order while transporting nonhazardous materials, then the person shall be disqualified from operating a commercial motor vehicle for a period of:
 - (a) Ninety (90) days for the first offense;
 - (b) One (1) year for the second offense in a separate incident within a ten (10) year period; and
 - (c) Three (3) years for the third or subsequent offense in a separate incident within a ten (10) year period.
- (11) If a person who holds or is required to hold a CDL violates an out-of-service order while transporting hazardous materials required to be placarded under the 49 U.S.C. sec. 5101 et seq., or operating a commercial motor vehicle designed to transport sixteen (16) or more passengers, including the driver, then the person shall be disqualified from operating a commercial motor vehicle for a period of:
 - (a) One hundred eighty (180) days for the first offense; and
 - (b) Three (3) years for the second or subsequent offense in a separate incident within a ten (10) year period.

- (12) *A person who violates the provisions of Section 1 of this Act shall be fined fifty dollars (\$50) for the first offense. For a subsequent offense, a violator shall be fined one hundred dollars (\$100) and shall have his or her school bus endorsement suspended for a period of six (6) months.*
- (13) After disqualifying a commercial driver's license holder or suspending, revoking, or canceling a commercial driver's license, the Transportation Cabinet shall update its records to reflect that action within ten (10) days of receipt. After disqualifying a commercial driver's license holder or suspending, revoking, or canceling an out-of-state commercial driver's license holder's privilege to operate a commercial motor vehicle for at least sixty (60) days, the Transportation Cabinet shall notify the licensing authority of the state which issued the commercial driver's license or commercial driver's instruction permit with this information within ten (10) days. The notification shall include both the disqualification and the violation that resulted in the disqualification, suspension, cancellation, or revocation.
- ~~(14)~~~~(13)~~ Upon notice from the Federal Motor Carrier Safety Administration that a driver has been determined to be an imminent hazard and has been disqualified from operating a commercial motor vehicle, the cabinet shall act in accordance with the provisions of 49 C.F.R. sec. 383.52. The cabinet shall notify the driver of the disqualification, which shall not exceed one (1) year in duration, and of the right to appeal to the Federal Motor Carrier Safety Administration in accordance with 49 C.F.R. sec. 383.52.

Approved April 5, 2007.

CHAPTER 139

(HB 358)

AN ACT relating to criminal justice.

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

SECTION 1. A NEW SECTION OF KRS 15.380 TO 15.404 IS CREATED TO READ AS FOLLOWS:

The certification of a peace officer may, after a hearing held in conformity with KRS Chapter 13B, be revoked by the council for one (1) or more of the following:

- (1) *Failure to meet or maintain training requirements;*
- (2) *Willful falsification of information to obtain or maintain certified status;*
- (3) *Certification that was the result of an administrative error;*
- (4) *Plea of guilty to, conviction of, or entering of an Alford plea to any felony;*
- (5) *Prohibition by federal or state law from possessing a firearm; or*
- (6) *Receipt of a dishonorable discharge, bad conduct discharge, or general discharge under other than honorable conditions from any branch of the Armed Forces of the United States.*

Section 2. KRS 15.330 is amended to read as follows:

- (1) The council is vested with the following functions and powers:
 - (a) To prescribe standards for the approval and continuation of approval of schools at which law enforcement and telecommunications training courses required under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.992 shall be conducted, including but not limited to minimum standards for facilities, faculty, curriculum, and hours of attendance related thereto;
 - (b) To prescribe minimum qualifications for instructors at such schools, except that institutions of higher education shall be exempt from council requirements;
 - (c) To prescribe qualifications for attendance and conditions for expulsion from such schools;
 - (d) To prescribe minimum standards and qualifications for voluntary career development programs for certified peace officers and telecommunications, including minimum standards for experience, education, and training, and to issue certificates to those meeting the minimum standards;

- (e) To approve, to issue, and to revoke for cause certificates to schools and instructors as having met requirements under KRS 15.310 to ~~15.404~~~~[15.510, 15.530 to 15.590, and 15.990 to 15.992]~~;
 - (f) To approve law enforcement officers, telecommunicators, and other persons as having met requirements under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.992;
 - (g) To inspect and evaluate schools at any time and to require of schools, instructors, and persons approved or to be approved under the provisions of KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.992, any information or documents;
 - (h) To promulgate reasonable rules and administrative regulations in accordance with KRS Chapter 13A to accomplish the purposes of KRS 15.310 to ~~15.404~~~~[15.510, 15.530 to 15.590, and 15.990 to 15.992]~~;
 - (i) To monitor the Law Enforcement Foundation Program as prescribed in KRS 15.410 to 15.510;
 - (j) To adopt bylaws for the conduct of its business not otherwise provided for; and
 - (k) The council shall have the authority to certify police officers as set out in this chapter.
- (2) The provisions of KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.992 do not apply to the Department of State Police except for the certification requirement established by this chapter.

Section 3. KRS 15.382 is amended to read as follows:

A person certified after December 1, 1998, under KRS 15.380 to 15.404 shall, at the time of becoming certified, meet the following minimum qualifications:

- (1) Be a citizen of the United States;
- (2) Be at least twenty-one (21) years of age;
- (3) Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination;
- (4) Possess a valid license to operate a motor vehicle;
- (5) Be fingerprinted for a criminal background check;
- (6) Not have been convicted of any felony;
- (7) Not be prohibited by federal or state law from possessing a firearm;
- (8) Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;
- (9) Have not received a dishonorable discharge, ***bad conduct discharge***, or general discharge under other than honorable conditions if having served in any branch of the armed forces of the United States;
- (10) Have passed a medical examination as defined by the council by administrative regulation to determine if he can perform peace officer duties as determined by a validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall pass the medical examination, appropriate to the agency's job task analysis, of the employing agency. All agencies shall certify passing medical examination results to the council, which shall accept them as complying with KRS 15.315 to 15.510;
- (11) Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council, which shall accept them as complying with KRS 15.315 to 15.510;
- (12) Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a peace officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.315 to 15.510;
- (13) Have been interviewed by the employing agency;
- (14) Not have had certification as a peace officer permanently revoked in another state;

- (15) Have taken a psychological suitability screening administered or approved by the council by administrative regulation to determine the person's suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take that agency's psychological examination, appropriate to the agency's job task analysis. All agencies shall certify psychological examination results to the council, which shall accept them as complying with KRS 15.315 to 15.510;
- (16) Have passed a physical agility test administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take the physical agility examination of the employing agency. All agencies shall certify physical agility examination results to the council, which shall accept them as demonstrating compliance with KRS 15.315 to 15.510; and
- (17) Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a peace officer to the council, which shall accept them as complying with KRS 15.315 to 15.510.

Section 4. KRS 15.386 is amended to read as follows:

The following certification categories shall exist:

- (1) "Precertification status" means that the officer is currently employed or appointed by an agency and meets or exceeds all those minimum qualifications set forth in KRS 15.382, but has not successfully completed a basic training course, except those *peace* officers covered by KRS 15.400. Upon the council's verification that the minimum qualifications have been met, the officer shall have full peace officer powers as authorized under the statute under which he *or she* was appointed or employed. If an officer fails to successfully complete a basic training course within one (1) year of employment, his or her enforcement powers shall automatically terminate.
- (2) "Certification status" means that unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has met all training requirements. The officer shall have full peace officer powers as authorized under the statute under which he *or she* was appointed or employed.
- (3) (a) "Inactive status" means that unless the certification is in revoked status:
 - 1. The person has been separated on or after December 1, 1998, from the agency by which he *or she* was employed or appointed and has no peace officer powers; or
 - 2. The person is on military active duty for a period exceeding three hundred sixty-five (365) days.
- (b) The person may remain on inactive status. A person who is on inactive status and who returns to a peace officer position shall have certification status restored if he or she has successfully completed a basic training course approved and recognized by the council, has not committed an act for which his or her certified status may be revoked pursuant to ***Section 1 of this Act***~~[KRS 15.380 to 15.404]~~ and successfully completes in-service training as prescribed by the council, as follows:
 - 1. ~~[No more than forty (40) hours]~~If the person has been on inactive status for a period of less than three (3) years, and the person was not in training deficiency status at the time of separation, ***he or she shall complete:***
 - a. ***The twenty-four (24) hour legal update Penal Code course;***
 - b. ***The sixteen (16) hour legal update constitutional procedure course; and***
 - c. ***The mandatory training course approved by the Kentucky Law Enforcement Council, pursuant to KRS 15.334, for the year in which he or she returns to certification status;***
or
 - 2. ~~[No more than eighty (80) hours]~~If the person has been on inactive status for a period of three (3) years or more, or the person was in training deficiency status at the time of separation, ***he or she shall complete:***

- a. *The twenty-four (24) hour legal update Penal Code course;*
 - b. *The sixteen (16) hour legal update constitutional procedure course;*
 - c. *The mandatory training course approved by the Kentucky Law Enforcement Council, pursuant to KRS 15.334, for the year in which he or she returns to certification status; and*
 - d. *One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:*
 - i. *Basic officer skills;*
 - ii. *Orientation for new police chiefs; or*
 - iii. *Mandatory duties of the sheriff.*
- (c) *A person returning from inactive to active certification after the effective date of this Act, under KRS 15.380 to 15.404, shall meet the following minimum qualifications:*
- 1. *Be a citizen of the United States;*
 - 2. *Possess a valid license to operate a motor vehicle;*
 - 3. *Be fingerprinted for a criminal background check;*
 - 4. *Not have been convicted of any felony;*
 - 5. *Not be prohibited by federal or state law from possessing a firearm;*
 - 6. *Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;*
 - 7. *Have not received a dishonorable discharge, bad conduct discharge, or general discharge under other than honorable conditions if having served in any branch of the Armed Forces of the United States;*
 - 8. *Have been interviewed by the employing agency; and*
 - 9. *Not have had certification as a peace officer permanently revoked in another state.*
- (4) "Training deficiency status" means that unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has failed to meet all in-service training requirements. The officer's enforcement powers shall automatically terminate, and he or she shall not exercise peace officer powers in the Commonwealth until he or she has corrected the in-service training deficiency.
- (5) "Revoked status" means that the officer has no enforcement powers and ***his or her certification has been revoked by the Kentucky Law Enforcement Council***~~has been separated from an enforcement agency~~ for any one (1) of the following reasons:
- (a) Failure to meet or maintain training requirements;
 - (b) Willful falsification of information to obtain or maintain certified status;
 - (c) Certification was the result of an administrative error;
 - (d) Plea of guilty to, conviction of, or entering of an Alford plea to any felony;
 - (e) Prohibition by federal or state law from possessing a firearm; ***or***
 - (f) ***Receipt of a dishonorable discharge, bad conduct discharge, or general discharge under other than honorable conditions from any branch of the Armed Forces of the United States.***
- (6) "Denied status" means that a person does not meet the requirements to achieve precertification status or certification status.
- (7) The design of a certificate may be changed periodically. When a new certificate is produced, it shall be distributed free of charge to each currently certified peace officer.

Section 5. KRS 15.392 is amended to read as follows:

- (1) Within ten (10) working days from separation from service, the chief executive officer of the employing agency or his designee shall file with the council a summary report that provides the relevant information about the person's separation from service.
- (2) If the person ~~[has been]~~ separated *from service has successfully completed basic training at a school certified or recognized by the council, the council shall place the certification on inactive status. Placement of certification on inactive status shall not prevent the council from subsequently instituting an action to revoke an officer's certification in appropriate cases in accordance with Section 1 of this Act* for any reason justifying revoked or denied status pursuant to KRS 15.386, the council shall revoke the person's certification.
- (3) If the person has been separated *from service or* ~~[for any other reason other than death, or one justifying revoked or denied status pursuant to KRS 15.386; and~~
 - ~~(a) The person has successfully completed basic training at a school certified or recognized by the council, the council shall place the certification on inactive status; or~~
 - ~~(b) The person~~ has not successfully completed basic training at a school certified or recognized by the council, the certification shall lapse.
- (4) If the person has been separated due to death, the certification shall be retired.
- ~~[(5) The employing agency's findings of fact and evidentiary conclusions shall be deemed final. The council shall be limited only to revoking the certification.~~
- ~~[(6) The council shall not accept or hear complaints.]~~

Section 6. KRS 15.404 is amended to read as follows:

- (1) (a) Any peace officers employed or appointed after December 1, 1998, who have not successfully completed basic training at a school certified or recognized by the Kentucky Law Enforcement Council, shall within one (1) year of their appointment or employment, successfully complete at least six hundred forty (640) hours of basic training at a school certified or recognized by the Kentucky Law Enforcement Council.
- (b) *In the event of extenuating circumstances beyond the control of an officer that prevent the officer from completing basic training within one (1) year, the commissioner of the department or his or her designee may grant the officer an extension of time, not to exceed one hundred eighty (180) days, in which to complete the training.*
- (c) *Any peace officer who fails to successfully complete basic training within the specified time periods, including extensions, shall lose his or her law enforcement powers and his or her precertification status shall lapse. Further, the peace officer shall be prohibited from serving as a peace officer for a period of one (1) year from the date that his or her precertification lapses.*
- (2) (a) All peace officers with active certification status shall successfully complete forty (40) hours of annual in-service training that has been certified or recognized by the Kentucky Law Enforcement Council, that is appropriate to the officer's rank and responsibility and the size and location of his department.
- (b) *In the event of extenuating circumstances beyond the control of an officer that prevent the officer from completing the in-service training within one (1) year, the commissioner of the department or his or her designee may grant the officer an extension of time, not to exceed one hundred eighty (180) days, in which to complete the training. If the officer is unable to complete the in-service training due to injury or illness that prevents him or her from working as a peace officer, the one hundred eighty (180) day extension shall begin on the date that the officer returns to work.*
- (c) *Any peace officer who fails to successfully complete in-service training within the specified time periods, including extensions, shall lose his or her law enforcement powers and his or her certification status shall be changed to training deficiency status.*
- (d) *When a peace officer is deficient in required training, the commissioner of the department or his or her designee shall notify the council, which shall notify the peace officer and his or her agency.*
- (e) *The requirements of this subsection shall be waived for the period of time that a peace officer is serving on active duty in the United States Armed Forces.*

(f) *This waiver shall be retroactive for peace officers from the date of September 11, 2001.*

- (3) ~~[In the event of extenuating circumstances beyond the control of an officer that prevent the officer from completing the basic or in-service training within the time specified in subsections (1) and (2) of this section, the commissioner of the department or his or her designee may grant the officer an extension of time, not to exceed one hundred eighty (180) days in which to complete the training.~~
- (4) ~~Any peace officer who fails to successfully complete basic training within the specified time periods, including extensions, shall lose his or her law enforcement powers and his or her precertification status shall lapse. Any peace officer who fails to successfully complete in-service training within the specified time periods, including extensions, shall lose his or her law enforcement powers and his or her certification status shall be changed to training deficiency status. When a peace officer is deficient in required training, the commissioner of the department or his or her designee shall notify the council, which shall notify the peace officer and his or her agency.~~
- (5) ~~An officer who has lost his or her law enforcement powers due solely to his or her failure to meet the in-service training requirements of this section may regain his or her certification status and law enforcement powers upon successful completion of the training deficiency.~~

Section 7. KRS 18A.202 is amended to read as follows:

- (1) The secretary is authorized to install and implement by administrative regulation work-related incentive programs for state employees. Such programs may include, but need not be limited to, an employee suggestion system whereby employees in the classified service *and employees falling under KRS Chapter 16* may be recognized and rewarded for submitting suggestions that result in the improvement of state service or in the realization of financial savings by the state. Such programs may provide that when an employee suggestion has been adopted and resulted in a financial savings to the state, the employee who submitted the suggestion may be compensated for his service through a cash bonus in an amount to the lesser of ten percent (10%) of the amount saved or two thousand five hundred dollars (\$2,500).
- (2) *Nothing in this section shall be construed to allow KRS Chapter 16 employees to collect any fees or rewards for performance of acts in the line of duty as prohibited in KRS 16.110.*

Section 8. KRS 197.025 is amended to read as follows:

- (1) ~~KRS 61.870 to 61.884~~~~[and 61.878]~~ to the contrary notwithstanding, no person shall have access to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.
- (2) ~~KRS 61.870 to 61.884~~~~[61.872]~~ to the contrary notwithstanding, the department shall not be required to comply with a request for any record from any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, unless the request is for a record which contains a specific reference to that individual.
- (3) ~~KRS 61.870 to 61.884~~~~[61.880]~~ to the contrary notwithstanding, all persons confined in a penal facility shall challenge any denial of an open record with the Attorney General by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial pursuant to the procedures set out in KRS 61.880(2) before an appeal can be filed in a Circuit Court.
- (4) ~~KRS 61.870 to 61.884~~~~[61.872]~~ to the contrary notwithstanding, the Department of Corrections shall refuse to accept the hand delivery of an open records request from a confined inmate.
- (5) ~~KRS 61.870 to 61.884~~ to the contrary notwithstanding, all records containing information expunged pursuant to law shall not be open to the public.
- (6) The policies and procedures or administrative regulations of the department which address the security and control of inmates and penitentiaries shall not be accessible to the public or inmates. The Administrative Regulations Review Subcommittee's review process for *any of* these policies and procedures or administrative regulations, *which may be filed with the regulations compiler*, shall be conducted in closed sessions *and held confidential*.
- (7) ~~KRS 61.870 to 61.884~~~~[61.880(1)]~~ to the contrary notwithstanding, upon receipt of a request for any record, the department shall *respond to the request*~~[determine]~~ within five (5) days after receipt of the request, excepting Saturdays, Sundays, and legal holidays, *and state* whether the record *may be inspected or may not be*

inspected, or that the record is unavailable and when the record is expected to be available~~[shall be released]~~.

SECTION 9. A NEW SECTION OF KRS CHAPTER 197\ IS CREATED TO READ AS FOLLOWS:

- (1) *Whenever a court finds the personal attendance of a state prisoner is necessary in a civil action and orders the Justice Cabinet or its agent or any law enforcement officer to transport a prisoner in connection with the civil action, the party requesting that the state prisoner be transported to the hearing shall pay the transportation cost, which shall include the estimated round trip cost, including the state mileage rate and the estimated associated salary cost of correctional staff.*
- (2) *The court shall cause all transportation orders to be delivered to the warden or jailer of the detention facility where the prisoner resides. As soon as practicable after the receipt of the order, the warden or jailer shall notify the prisoner and the court of the total transportation cost. If the payment is not received twenty-four (24) hours in advance of the scheduled hearing, no transportation shall be provided, irrespective of the order of the court commanding the Justice Cabinet or its agent or other law enforcement officer to transport a prisoner.*
- (3) *To the extent practicable, any action concerning a prisoner in which the court has determined that the prisoner's participation is required or permitted may be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the facility in which the prisoner is confined.*
- (4) *The provisions of this section pertaining to payment of transportation costs shall not apply to parties who have been determined by the court to be indigent within the meaning of KRS Chapter 31 or other applicable law.*
- (5) *The Justice Cabinet shall promulgate an administrative regulation or regulations governing this process.*

Approved April 5, 2007.

CHAPTER 140

(SB 59)

AN ACT relating to safety for state social workers, declaring an emergency, and making an appropriation therefor.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

In honor of Boni Frederick who lost her life in the performance of her official duties, Sections 1, 3, 4, 5, and 6 of this Act, and the amendments made to KRS 194A.065 in this Act shall be known as the "Boni Frederick Bill."

Section 2. KRS 194A.065 is amended to read as follows:

For the purposes of this section, "front-line staff" means an employee of the Division of Service Regions of the Department for Community Based Services or the immediate supervisor of an employee whose professional duties include ongoing adult or child protective services, protective services investigations or assessments, or regularly conducting interviews, visits, contacts, or providing transportation services or other services in the homes of family members involved in adult or child protective services.

- (1) The Cabinet for Health and Family Services, the Department of Juvenile Justice, the Department of Corrections, the Administrative Office of the Courts, and the Kentucky State Police shall be responsible for the recording of those data elements that are needed for the development of the centralized criminal history record information system.
- (2) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440.
- (3) The Cabinet for Health and Family Services shall provide access to the Kentucky State Police, the Department of Corrections, the Department of Juvenile Justice, and the Administrative Office of the Courts to its database.
- (4) *The cabinet secretary and the secretary of the Justice Cabinet shall establish communications, policies, and procedures to enable designated cabinet staff of the Department for Community Based Services who are*

working on a protective services investigation or an ongoing protective services case to request a state criminal background check, and within a reasonable time frame, but no later than one (1) hour after receipt of a request, to have the state criminal background check sent to designated cabinet staff. Designated cabinet staff may request a state criminal background check at any time for a protective services investigation and may use the state criminal background check to assess staff safety concerns.

- (5) *The Cabinet for Health and Family Services shall prioritize the safety needs of the front-line staff of the Department for Community Based Services and provide improvements in accordance with this section and Sections 3, 4, and 6 of this Act.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 605 IS CREATED TO READ AS FOLLOWS:

- (1) *Each staff member of the department shall report to his or her supervisor any physical or verbal conduct of a client or an individual associated with a client that appears to be threatening or menacing, and any incident of assault, attempted assault, or physical contact that appears to be threatening to any staff member. Any use or threat of use of any type of weapon shall be reported. The supervisor shall report threat or incident information to the commissioner of the department or his or her designee. An employee who reports under this subsection shall be protected from reprisals pursuant to KRS 61.102.*
- (2) *The department shall establish and maintain an information system and track all reports of threats or incidents involving violence against department staff as required by subsection (1) of this section. The department shall provide, upon request, the number and type of reports received and any information available regarding civil or criminal action or changes to policies and procedures resulting from threats or incidents of violence upon staff.*
- (3) *The department shall designate or establish a safety liaison position within its central office and in each regional office. The regional administrator may designate or establish a safety liaison position in each county office. The duties of the central office safety liaison shall include but not be limited to:*
 - (a) *Development and implementation of policies and procedures related to the prevention of violence in the office and in community settings;*
 - (b) *Screening and assessment of the level of threat for professional-client interactions;*
 - (c) *Facilitation of safety training and safety and first alert protocols with all law enforcement agencies that work with each county office. Existing multidisciplinary teams may be utilized in the development of local safety protocols; and*
 - (d) *Administration of a Web-based social worker safety site and a threat and violence incident database.*

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

The cabinet shall conduct risk assessments on all local offices of the Division of Service Regions of the Department for Community Based Services and remediate the office environments that do not provide adequate safety and protection for cabinet staff to the extent possible with consideration of office space lease arrangements and availability of funding for office renovations.

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

The cabinet secretary shall designate a study group composed of personnel within the Department for Community Based Services' field services staff and any other persons deemed necessary to make recommendations regarding personnel classifications for state agency social workers. The study group shall include in its deliberations, but is not limited to, special personnel designations that would permit or require specialized personal safety training and other requirements that reflect the sometimes dangerous nature of official job duties of state agency social workers. The study group shall report its recommendations by November 15, 2007, to the Governor and the Interim Joint Committees on Appropriations and Revenue and Health and Welfare.

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

Front-line staff may request a risk or safety assessment prior to an investigation or delivery of services in a community setting. The direct supervisor of the requesting front-line staff and the safety liaison officer if a safety liaison officer position is designated for the county shall conduct the safety or risk assessment. If the situation warrants the accompaniment of front-line staff by a local law enforcement officer, the supervisor shall make the request to the local law enforcement agency.

Section 7. The Secretary of the Cabinet for Health and Family Services shall have the authority to declare a state of extraordinary circumstances upon a finding that the safety of social workers in the Commonwealth is in serious jeopardy. The secretary shall submit the declaration to the Governor for certification. Upon certification by the Governor, the secretary may then request approval from the Governor for funds not to exceed \$6,000,000 in fiscal biennium 2006-2008 to be deemed a necessary governmental expense. Upon approval by the Governor, funds not to exceed \$6,000,000 shall be transferred from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705) to the cabinet to address immediate safety needs of front line staff which shall be expended in the following manner: \$2,500,000 in General Fund moneys to fill front line staff positions; and \$3,500,000 in General Fund moneys for updates to the office space used by the Department for Community Based Services, Division of Service Regions, to procure emergency alert technology for front line staff, and to provide safe and appropriate family visits for children in the custody of the cabinet on the premises of the cabinet. In no event shall funds transferred as necessary governmental expense exceed \$6,000,000. The transfer of any funds pursuant to this section shall be subject to the provisions and notification requirements of KRS 48.630. Moneys appropriated pursuant to this section shall be placed in a trust and agency account to be used for the purposes set forth in this section. Moneys appropriated for the personnel purposes set forth in this section shall be included in the department's base funding for fiscal biennium 2008-2010, and any new positions shall be in addition to the personnel cap in effect on July 1, 2006. The cabinet shall submit monthly updates to the Interim Joint Committees on Appropriations and Revenue and Health and Welfare on expenditures made pursuant to this section.

Section 8. Whereas the social workers employed by the Commonwealth of Kentucky are subject to dangerous circumstances, and children and citizens of the Commonwealth deserve an adequate response to allegations of adult or child abuse, neglect, or exploitation, an emergency is declared to exist and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved April 5, 2007.

CHAPTER 141

(HB 360)

AN ACT relating to the streamlined sales and use tax agreement.

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

Section 1. KRS 139.050 is amended to read as follows:

- (1) "Gross receipts" and "sales price" mean the total amount or consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:
 - (a) The retailer's cost of the property sold;
 - (b) The cost of the materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, or any other expense of the retailer;
 - (c) Charges by the retailer for any services necessary to complete the sale;
 - (d) Delivery charges, which are defined as charges by the retailer for the preparation and delivery to a location designated by the purchaser including transportation, shipping, postage, handling, crating, and packing; and
 - (e) Any amount for which credit is given to the purchaser by the retailer, other than credit for property traded when the property traded is of like kind and character to the property purchased and the property traded is held by the retailer for resale.
- (2) *"Gross receipts" and "sales price" shall include consideration received by the retailer from a third party if:*
 - (a) *The retailer actually receives consideration from a third party and the consideration is directly related to a price reduction or discount on the sale to the purchaser;*
 - (b) *The retailer has an obligation to pass the price reduction or discount through to the purchaser;*
 - (c) *The amount of consideration attributable to the sale is fixed and determinable by the retailer at the time of the sale of the item to the purchaser; and*

(d) *One (1) of the following criteria is met:*

1. *The purchaser presents a coupon, certificate or other documentation to the retailer to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;*
2. *The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser; or*
3. *The purchaser identifies himself to the retailer as a member of a group or organization entitled to a price reduction or discount. A "preferred customer" card that is available to any patron does not constitute membership in such a group.*

(3) "Gross receipts" and "sales price" shall not include:

- (a) Discounts, including cash, term, or coupons that are not reimbursed by a third party, and that are allowed by a retailer and taken by a purchaser on a sale;
- (b) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (c) Any taxes legally imposed directly on the purchaser that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or
- (d) The amount charged for labor or services rendered in installing or applying the property or service sold, provided the amount charged is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(4) *As used in this section, "third party" means a person other than the purchaser.*

Section 2. KRS 139.105 is amended to read as follows:

(1) For purposes of the retailer's obligation to pay or collect and remit the taxes imposed by KRS 139.200 and 139.310, the retailer shall source the retail sale, excluding sales of communications services as follows:

- (a) Over the counter. When the purchaser receives tangible personal property or service at a business location of the retailer, the sale is sourced to that business location.
- (b) Delivery to a specified address. When a purchaser or purchaser's donee receives tangible personal property or service at a location specified by the purchaser, the sale is sourced to that location.
- (c) Delivery address unknown. When the retailer of a product does not know the address where the tangible personal property or service is received, the sale is sourced to the first address listed in this paragraph that is known to the retailer:
 1. The address of the purchaser;
 2. The billing address of the purchaser; or
 3. The address from which the tangible personal property was shipped; from which the computer software was delivered electronically or was first available for transmission by the retailer; or from which the service was provided.

(2) The retailer shall source communications services as follows:

- (a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid **wireless** calling service, shall be sourced to the customer's or other purchaser's place of primary use.
- (b) A sale of post-paid calling service shall be sourced to the origination point of the telecommunications signal as first identified by either the retailer's telecommunications system or information received by the retailer from its service provider, where the system used to transport the signals is not that of the retailer.
- (c) A sale of prepaid calling service *or a sale of a prepaid wireless calling service* shall be sourced according to the provisions of subsection (1) of this section. If the sale is of a prepaid **wireless** calling

service~~[that is also a mobile telecommunications service]~~ and the retailer does not know the address where the service is received, the sale shall be sourced to the first of the following that is known by the retailer:

1. The address of the customer available from the business records of the retailer;
2. The billing address of the customer;
3. The address from which the service was provided; or
4. The location associated with the mobile telephone number.

(d) A sale of a private communications service shall be sourced as follows:

1. Service for a separate charge related to a customer channel termination point shall be sourced to each level of jurisdiction in which the customer channel termination point is located.
2. Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.
3. Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of channel are separately charged shall be sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.
4. Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are *not* separately billed shall be sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(e) *A sale of an ancillary service is sourced to the customer's place of primary use.*

(f) *A sale of other communications services:*

1. *Sold on a call-by-call basis shall be sourced based on the taxing jurisdiction where the call either originates or terminates and in which the service address is also located; or*
2. ~~[A sale of other communications services]~~ Sold on a basis other than a call-by-call basis shall be sourced to the customer's or other purchaser's place of primary use.

(3) Nothing included in subsection (1) or (2) of this section shall affect the obligation of a purchaser to remit use tax pursuant to KRS 139.310.

Section 3. KRS 139.195 is amended to read as follows:

As used in KRS 139.105, 139.200, *Section 6 of this Act*, and 139.775:

- (1) *"Ancillary services" means services that are associated with or incidental to the provision of telecommunications services including, caller ID services, detailed communications billing, directory assistance, vertical services, conference bridging service, and voice mail services.*
- (2) *"Air-to-ground"*~~[Air-ground]~~ radiotelephone service" means a radio service, as defined in 47 C.F.R. 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.
- (3)~~[(2)]~~ "Call-by-call basis" means any method of charging for *telecommunications*~~[communications]~~ services where the price is measured by individual calls.
- (4)~~[(3)]~~ "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
- (5)~~[(4)]~~ (a) "Communications service" means *telecommunications services and ancillary services*~~[the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber optic, or similar medium or method now in existence or later devised.~~

(a) ~~"Communications service" includes but is not limited to:~~

- ~~1. Local and long distance telephone services;~~
- ~~2. Telegraph and teletypewriter services;~~
- ~~3. Prepaid calling services and postpaid calling services;~~
- ~~4. Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;~~
- ~~5. Channel services involving a path of communications between two (2) or more points;~~
- ~~6. Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;~~
- ~~7. Caller ID services, voice mail and other electronic messaging services;~~
- ~~8. Mobile telecommunications service as provided in 4 U.S.C. sec. 124(7); and~~
- ~~9. Voice over Internet Protocol (VOIP).}~~

(b) "Communications service" does not include~~[any of the following if the charges are separately itemized on the bill provided to the purchaser:~~

- ~~1. Information services;~~
- ~~2. Internet access as provided in the federal Internet Tax Nondiscrimination Act, 47 U.S.C. sec. 451;~~
- ~~3. Installation, reinstallation, or maintenance of wiring or equipment on a customer's premises. This exclusion does not apply to any charge attributable to the connection, movement, change, or termination of a communications service;~~
- ~~4. The sale of directory and other advertising and listing services;~~
- ~~5. Billing and collection services provided to another communications service provider;~~
- ~~6. Cable service, satellite broadcast, satellite master antenna television, and wireless cable service, including direct to home satellite service as defined in Section 602 of the federal Telecommunications Act of 1996;~~
- ~~7. }the sale of communications service to a communications provider that is buying the communications service for sale or incorporation into a communications service for sale if:~~
 - ~~1. The seller separately itemizes the charges for these services on the bill provided to the purchaser; or~~
 - ~~2. The seller can identify, by reasonable and verifiable standards, the charges for these services from its books and records kept in the regular course of business for other purposes including nontax purposes. These services include[, including]:~~
 - ~~a. Carrier access charges, excluding user access fees;~~
 - ~~b. Right of access charges;~~
 - ~~c. Interconnection charges paid by the provider of mobile telecommunications services or other communications providers;~~
 - ~~d. Charges for the sale of unbundled network elements as defined in 47 U.S.C. sec. 153(29) on January 1, 2001, to which access is provided on an unbundled basis in accordance with 47 U.S.C. sec. 251(c)(3); and~~
 - ~~e. Charges for use of facilities for providing or receiving communications service[, and~~
- ~~8. The sale of communications services provided to the public by means of a pay phone}.~~

(6)(5) *"Conference bridging services" means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference bridging services" does not include the telecommunications services used to reach the conference bridge.*

- (7) "Customer" means the person or entity that contracts with the seller of communications services. If the end user of communications services is not the contracting party, the end user of the communications service is the customer of the communications service, but only as it applies to the sourcing of the sale of communications services as provided in KRS 139.105. "Customer" does not include a reseller of communications service or a serving carrier providing mobile telecommunications service under an agreement to serve the customer outside the home service provider's licensed service area.
- (8)~~(6)~~ "Customer channel termination point" means the location where the customer or other purchaser either inputs or receives communications.
- (9) *"Detailed telecommunications billing service" means an ancillary service of separately stated information pertaining to individual calls on a customer's billing statement.*
- (10) *"Directory assistance" means an ancillary service of providing telephone number information or address information.*
- (11)~~(7)~~ "End user" means the person who utilized the communications service. In the case of an entity, "end user" means the individual who utilized the service on behalf of the entity.
- (12) *"Fixed wireless service" means a telecommunications service that provides radio communications between fixed points.*
- (13)~~(8)~~ "Home service provider" means the same as provided in 4 U.S.C. sec. 124(5).
- (14) *"International" means a service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession.*
- (15) *"Interstate" means a service that originates in one state of the United States or a United States territory or possession, and terminates in a different state of the United States or United States territory or possession.*
- (16) *"Intrastate" means a service that originates in one state of the United States or a United States territory or possession, and terminates in the same state of the United States or a United States territory or possession.*
- (17)~~(9)~~ "Mobile telecommunications service" means the same as provided in 4 U.S.C. sec. 124(7).
- (18) *"Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and termination points or the origination or termination points of the transmission, conveyance, or routing are not fixed, including, by the way of example only, telecommunications services that are provided by a commercial mobile radio service provider.*
- (19) *"Paging service" means a telecommunications service that provides a transmission of coded radio signals for the purpose of activating specific pagers. Such transmissions may include messages or sounds.*
- (20) *"Pay telephone service" means a telecommunications service provided through any pay telephone.*
- (21)~~(10)~~ "Place of primary use" means the street address where the customer's or other purchaser's use of the communications service primarily occurs, and that is the residential street address or the primary business street address of the customer or other purchaser. In the case of mobile telecommunications service, "place of primary use" shall be within the licensed service area of the home service provider.
- (22)~~(11)~~ "Post-paid calling service" means a **telecommunications**~~communications~~ service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number not associated with the origination or termination of the **telecommunications**~~communications~~ service. A post-paid calling service includes a **telecommunications**~~communications~~ service, *except a prepaid wireless calling service*, that would be a prepaid service except that it is not exclusively a **telecommunications**~~communications~~ service.
- (23)~~(12)~~ "Prepaid calling service" means the right to access exclusively **telecommunications**~~communications~~ services, which are paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.
- (24) *"Prepaid wireless calling service" means a telecommunications service that:*

- (a) *Provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services;*
 - (b) *Must be paid for in advance; and*
 - (c) *Is sold in predetermined units of dollars of which the number declines with use in a known amount.*
- (25)~~(13)~~ "Private communications service" means a **telecommunications**~~communications~~ service that entitles the customer or other purchaser to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of a channel or channels.
- (26) *"Ring tones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.*
- (27)~~(14)~~ (a) "Service address" means the location of communications equipment to which a customer's or other purchaser's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
- (b) If the location of the communications equipment is not known, "service address" means the origination point of the signal of the communications services first identified by either the seller's communications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.
- (c) If the location cannot be determined according to the guidelines set forth in paragraphs (a) and (b) of this subsection, "service address" means the location of the customer's or other purchaser's place of primary use.
- (28) *"Telecommunications nonrecurring charges" means an amount billed for the installation, connection, change, or initiation of telecommunications service received by the customer.*
- (29) (a) *"Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.*
- (b) *"Telecommunications service" includes but is not limited to:*
1. *The transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice over Internet protocol (VOIP) services or is classified by the Federal Communications Commission as enhanced or value-added;*
 2. *Paging services;*
 3. *Telegraph and teletypewriter services;*
 4. *Local and long distance telephone services;*
 5. *Fixed wireless service;*
 6. *Mobile wireless service;*
 7. *Private communications service;*
 8. *Telecommunications nonrecurring charges;*
 9. *Value-added nonvoice data service;*
 10. *800 service; and*
 11. *900 service.*
- (c) *"Telecommunications service" does not include:*
1. *Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;*

2. *Installation or maintenance of wiring or equipment on a customer's premises;*
 3. *Tangible personal property;*
 4. *Advertising, including but not limited to directory advertising;*
 5. *Billing and collection services provided to third parties;*
 6. *Internet access service as defined in 47 U.S.C. sec. 151;*
 7. *Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to cable services as defined in 47 U.S.C. sec. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;*
 8. *Ancillary services;*
 9. *Digital products delivered electronically, including but not limited to software, music, video, rating materials or ring tones; or*
 10. *Telephone answering services.*
- (30) *"Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for the purpose other than transmission, conveyance, or routing.*
- (31) *"Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.*
- (32) *"Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.*
- (33) *"800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.*
- (34) *"900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live serve. "900 service" does not include the charge for collections services provided to the seller of the telecommunications services to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.*

Section 4. KRS 139.200 is amended to read as follows:

A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts derived from:

- (1) Retail sales, regardless of the method of delivery, made within this Commonwealth; and
- (2) The furnishing of the following:
 - (a) The rental of any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. The tax shall not apply to rooms, lodgings, or accommodations supplied for a continuous period of thirty (30) days or more to a person;
 - (b) Sewer services;
 - (c) The sale of admissions except those taxed under KRS 138.480;

- (d) Prepaid calling service *and prepaid wireless calling service* ~~[, which means the right to access exclusively communications services, which are paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines in a known amount with use];~~
- (e) *Intrastate, interstate and international* communications service ~~[to a service address in this state, other than mobile telecommunications services] as defined in KRS 139.195, except the furnishing of pay telephone service as defined in KRS 139.195[regardless of where those services are billed or paid, when the communications service:~~
 - 1. ~~Originates and terminates in this state;~~
 - 2. ~~Originates in this state; or~~
 - 3. ~~Terminates in this state];~~
- (f) *Ring tones* ~~[Mobile telecommunications services] as defined in KRS 139.195, to a purchaser whose place of primary use is in this state; and~~
- (g) Distribution, transmission, or transportation services for natural gas that is for storage, use, or other consumption in this state, excluding those services furnished:
 - 1. For natural gas that is classified as residential use as provided in KRS 139.470(8); or
 - 2. To a seller or reseller of natural gas.

Section 5. KRS 139.210 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, the tax shall be required to be collected by the retailer from the purchaser. ~~[If the taxable goods are bundled with services and are sold as a single package for one (1) price, the tax required to be collected by the retailer from the purchaser shall be computed on the entire amount.]~~ The tax shall be displayed separately from the sales price, the price advertised in the premises, the marked price, or other price on the sales receipt or other proof of sales.
- (2) The department may relieve certain retailers from the provisions of subsection (1) of this section of separate display of the tax when the circumstances of the retailer make compliance impracticable. If the retailer establishes to the satisfaction of the department that the sales tax has been added to the total amount of the sales price and has not been absorbed by the retailer, the amount of the sales price shall be the amount received exclusive of the tax imposed.
- (3) The taxes collected under this section shall be deemed to be held in trust by the retailer for and on account of the Commonwealth of Kentucky.
- (4) The taxes to be collected under this section shall constitute a debt of the retailer to the Commonwealth.

SECTION 6. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO READ AS FOLLOWS:

- (1) *Unless otherwise provided by federal law, the following rules shall apply to a bundled transaction as defined in subsection (3) of this section, that includes any or all of a telecommunications service, ancillary service, Internet access, audio programming or video programming:*
 - (a) *If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable product is subject to tax unless the provider can identify, by reasonable and verifiable standards, the portion of the products that are nontaxable from its books and records that are kept in the regular course of business for other purposes, including nontax purposes; or*
 - (b) *If the price is attributable to products that are subject to tax at different rates, the total price shall be treated as attributable to the products subject to tax at the highest rate unless the provider can identify, by reasonable and verifiable standards, the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including nontax purposes.*
- (2) *The following rules shall apply to all bundled transactions except as provided in subsection (1) of this section:*

- (a) *If the price is attributable to products where taxable and exempt tangible personal property have been bundled together and sold by the retailer as a bundled transaction, the entire charge is subject to tax; or*
- (b) *If the price is attributable to products where taxable products and exempt services have been bundled together and sold by the retailer as a bundled transaction, the entire charge is subject to tax.*
- (3) (a) *For purposes of this section, "bundled transaction" means the retail sale of two (2) or more products, except real property and services to real property, where:*
 - 1. *The products are otherwise distinct and identifiable; and*
 - 2. *The products are sold for one (1) nonitemized price.*
- (b) *Distinct and identifiable products do not include:*
 - 1. *Packaging such as containers, boxes, sacks, bags, bottles, wrapping, materials, labels, tags, or instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples include grocery sacks, shoe boxes, dry cleaning garment bags and express delivery envelopes and boxes;*
 - 2. *A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or*
 - 3. *Items included in the definition of sales price pursuant to KRS 139.050.*
- (c) *One (1) nonitemized price does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.*
- (4) *A bundled transaction does not include:*
 - (a) *The retail sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction;*
 - (b) *The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;*
 - (c) *The retail sale of services where one (1) service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;*
 - (d) *A transaction that includes taxable products and nontaxable products if the purchase price or sales price of the taxable products is de minimis. For purposes of this section, "de minimis" means the seller's purchase price or the sales price of the taxable products is ten percent (10%) or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers shall not use a combination of the purchase price and the sales price of the products to determine if the taxable products are de minimis. Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or*
 - (e) *The retail sale of exempt tangible personal property and taxable tangible personal property where:*
 - 1. *The transaction includes:*
 - a. *Food and food ingredients as defined in KRS 139.485;*
 - b. *Drugs as defined in KRS 139.472;*
 - c. *Durable medical equipment as defined in KRS 139.472;*
 - d. *Mobility enhancing equipment as defined in KRS 139.472;*
 - e. *Medical supplies; or*

f. Over-the-counter drugs. For purposes of this section, "over-the-counter drugs" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. sec. 201.66. The over-the-counter drug label shall include a "drug facts" panel, or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation; and

2. The seller's purchase price or sales price of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or sales price of the bundled tangible personal property. Sellers shall not use a combination of the purchase price and the sales price of the tangible personal property when making the fifty percent (50%) determination for a transaction.

Section 7. KRS 139.270 is amended to read as follows:

- (1) The resale certificate or certificate of exemption relieves the retailer or seller from the burden of proof only if taken in good faith from a person who, at the time of purchasing the tangible personal property:
 - (a) Indicates an intention to sell it in the regular course of business by executing the resale certificate; or
 - (b) Indicates that the property purchased will be used in an exempt manner by executing a certificate of exemption.
- (2) This relief from liability *provided to the retailer or the seller in subsection (1) of this section* does not apply to a retailer or seller who:
 - (a) Fraudulently fails to collect the tax;~~[-or-]~~
 - (b) Solicits purchasers to participate in the unlawful claiming of an exemption; *or*
 - (c) *Accepts an exemption certificate when the purchaser claims an entity-based exemption when:*
 - 1. The product sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the retailer or seller; and*
 - 2. The state in which that location resides provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in that state.*

For purposes of this paragraph, "entity-based exemption" means an exemption based on who purchases the product or who sells the product. An exemption available to all individuals shall not be considered an entity-based exemption.
- ~~(3)(2)~~ (a) "Good faith" shall be demonstrated by the retailer or seller if the retailer or seller:
 - ~~1.(a)~~ Accepts, *within ninety (90) days subsequent to the date of sale*, a properly completed resale certificate or certificate of exemption; and
 - ~~2.(b)~~ Maintains a file of the certificate *or data elements* in accordance with KRS 139.720.
- (b) *If the retailer or seller has not obtained an exemption certificate or resale certificate or all relevant data elements within ninety (90) days subsequent to the date of sale, in keeping with the good faith standard, the seller or retailer may offer additional documentation to the department that the transaction is not subject to tax after the ninety (90) day period which the department may consider.*
- ~~(4)(3)~~ If the department later finds that the retailer or seller exercised good faith according to the provisions of subsection (2) of this section but that the purchaser used the property in a manner that would not have qualified for resale status or the purchaser issued a certificate of exemption and used the property in some other manner or for some other purpose, the department shall hold the purchaser liable for the remittance of the tax and may apply penalties provided in KRS 139.990.

Section 8. KRS 139.470 is amended to read as follows:

There are excluded from the computation of the amount of taxes imposed by this chapter:

- (1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property which this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;
- (2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:

- (a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and
- (b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers";

- (3) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;
- (4) Gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale;
- (5) Gross receipts from sales of tangible personal property to a common carrier, shipped by the retailer via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;
- (6) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the department. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;
- (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of property or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;
- (8)
 - (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include but not be limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Department of Revenue;
 - (b) In making the determinations of eligibility, the department shall exempt from taxation all gross receipts derived from sales:
 - 1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;
 - 2. Classified as "residential" by a municipally owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;
 - 3. Classified as "residential" by the governing body of a municipally owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.

If the service is classified as residential, use other than for "residential" purposes by the customer shall not negate the exemption;

- (c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and
- (d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;

- (9) Any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential *telecommunications service*. ***For purposes of this section, "residential telecommunications service" means a telecommunications service as defined in Section 3 of this Act or an ancillary service as defined in Section 3 of this Act provided to:***
- (a) ***An individual for personal use at a residential address, including an individual dwelling unit such as an apartment; or***
 - (b) ***An individual residing in an institution such as a school or nursing home if the service is paid for by an individual resident rather than the institution***~~telephone bill~~;
- (10) Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the retailer and the retailer maintains a file of the proof;
- (11) Gross receipts derived from the sale of, and the storage, use, or other consumption in this state of, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property at a plant facility and which will be for sale. The property shall be regarded as having been purchased for resale. "Plant facility" shall have the same meaning as defined in KRS 139.170(3). For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.
- (a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean:
 - 1. Materials which enter into and become an ingredient or component part of the manufactured product.
 - 2. Other tangible personal property which is directly used in manufacturing or industrial processing, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:
 - a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below.
 - b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.
 - c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured.
 - 3. Materials and supplies that are not reusable in the same manufacturing process at the completion of a single manufacturing cycle, excluding repair, replacement, or spare parts of any kind. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.
 - (b) It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.170;
- (12) Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority;

- (13) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is retailer's shipping point or purchaser's destination.
- (a) As used in this subsection:
1. "Catalogs" means tangible personal property that is printed to the special order of the purchaser and composed substantially of information regarding goods and services offered for sale; and
 2. "Newspaper inserts" means printed materials that are placed in or distributed with a newspaper of general circulation.
- (b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;
- (14) Gross receipts from the sale of water used in the raising of equine as a business;
- (15) Gross receipts from the sale of metal retail fixtures manufactured in this state and purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or the purchaser's destination.
- (a) As used in this subsection, "metal retail fixtures" means check stands and belted and nonbelted checkout counters, whether made in bulk or pursuant to specific purchaser specifications, that are to be used directly by the purchaser or to be distributed by the purchaser.
- (b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;
- (16) Gross receipts from the sale of unenriched or enriched uranium purchased for ultimate storage, use, or other consumption outside this state and delivered to a common carrier in this state for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer, or is an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or purchaser's destination;
- (17) Amounts received from a tobacco buydown. As used in this subsection, "buydown" means an agreement whereby an amount, whether paid in money, credit, or otherwise, is received by a retailer from a manufacturer or wholesaler based upon the quantity and unit price of tobacco products sold at retail that requires the retailer to reduce the selling price of the product to the purchaser without the use of a manufacturer's or wholesaler's coupon or redemption certificate;
- (18) Gross receipts from the sale of property returned by a purchaser when the full sales price is refunded either in cash or credit. This exclusion shall not apply if the purchaser, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned;
- (19) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS Chapter 138;
- (20) The amount of any tax imposed by the United States upon or with respect to retail sales, whether imposed on the retailer or the consumer, not including any manufacturer's excise or import duty;
- (21) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which is:
- (a) Sold to a Kentucky resident, registered for use on the public highways, and upon which any applicable tax levied by KRS 138.460 has been paid; or
- (b) Sold to a nonresident of Kentucky if the nonresident registers the motor vehicle in a state that:
1. Allows residents of Kentucky to purchase motor vehicles without payment of that state's sales tax at the time of sale; or
 2. Allows residents of Kentucky to remove the vehicle from that state within a specific period for subsequent registration and use in Kentucky without payment of that state's sales tax;

- (22) Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and trailer as defined in KRS 189.010(17);
- (23) Gross receipts from the sale of distilled spirits, wine, and malt beverages not consumed on the premises licensed for their sale under the provisions of KRS Chapter 243; and
- (24) Gross receipts from the first fifty thousand dollars (\$50,000) in sales of admissions to county fairs held in Kentucky in any calendar year by a nonprofit county fair board.

Section 9. KRS 139.472 is amended to read as follows:

- (1) Notwithstanding any other provisions of this chapter, the taxes imposed by this chapter shall not apply to the sale or purchase of:
 - (a) A drug purchased for the treatment of a human being for which a prescription is required by state or federal law, whether the drug is dispensed by a licensed pharmacist, administered by a physician or other health care provider, or distributed as a free sample to or from a physician's office;
 - (b) ***The following items if purchased for home use:***
 - 1. Medical oxygen;~~[-, including]~~
 - 2. High pressure cylinders, cryogenic tanks, or oxygen concentrators, ***or similar medical oxygen delivery equipment including repair and replacement parts for the equipment; or***
 - 3. Tubes, masks, and similar items required for the delivery of oxygen to the patient~~[-when purchased by an individual for private use];~~
 - (c) Insulin and diabetic supplies, including hypodermic syringes, needles, and sugar (urine and blood) testing materials purchased by an individual for private use;
 - (d) Colostomy, urostomy, or ileostomy supplies purchased by an individual for private use;
 - (e) Prosthetic devices purchased by any health care provider for use in the treatment of a specific individual or purchased by an individual as prescribed by a person authorized under the laws of the Commonwealth to issue prescriptions;
 - (f) Prosthetic devices that are individually designed or created for an individual regardless of the purchaser;
 - (g) Mobility enhancing equipment for which a prescription is issued; and
 - (h) Hospital beds purchased for private, noncommercial use.
- (2) Except as specifically provided in subsection (1) of this section, supplies or equipment used to deliver a drug to a patient are taxable.
- (3) As used in this section:
 - (a) "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages as defined in KRS 139.485, that is recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or a supplement to any of them, or is:
 - 1. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans; or
 - 2. Intended to affect the structure or any function of the human body.
 - (b) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a person authorized under the laws of the Commonwealth to prescribe a drug.
 - (c) 1. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:
 - a. Artificially replace a missing portion of the body;
 - b. Prevent or correct a physical deformity or malfunction; or
 - c. Support a weak or deformed portion of the body.

2. "Prosthetic device" shall not include any of the following:
 - a. Corrective eyeglasses;
 - b. Contact lenses; or
 - c. Dental prosthesis.
- (d) "Mobility enhancing equipment" means equipment including repair and replacements part for same, which:
 1. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;
 2. Is not generally used by persons with normal mobility; and
 3. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

"Mobility enhancing equipment" shall not include durable medical equipment.

- (e) "Durable medical equipment" means equipment including repair and replacement parts for same, which:
 1. Can withstand repeated use;
 2. Is primarily and customarily used to serve a medical purpose;
 3. Generally is not useful to a person in the absence of illness or injury; and
 4. Is not worn in or on the body.

"Durable medical equipment" shall not include mobility enhancing equipment.

Section 10. KRS 139.485 is amended to read as follows:

- (1) Except as otherwise provided, the terms "retail sale," "use," "storage," and "consumption" as used in this chapter shall not include the sale, use, storage or consumption of food and food ingredients for human consumption.
- (2) The term "food" and food ingredients as used in subsection (1) of this section means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" shall not include:
 - (a) Alcoholic beverages;
 - (b) Tobacco;
 - (c) Candy;
 - (d) Dietary supplements;
 - (e) Soft drinks; and
 - (f) Prepared food.
- (3) For purposes of this section:
 - (a) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume;
 - (b) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco;
 - (c) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include:
 1. Any preparation containing flour; or
 2. Any item requiring refrigeration;
 - (d) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

1. Contains one (1) or more of the following dietary ingredients:
 - a. A vitamin;
 - b. A mineral;
 - c. An herb or other botanical;
 - d. An amino acid;
 - e. A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
 - f. A concentrate, metabolite, constituent, extract, or combination of any ingredient described above;
 2. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form or, if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
 3. Is required to be labeled as a dietary supplement, identifiable by the "Supplement facts" box found on the label as required pursuant to 21 C.F.R. 101.36;
- (e) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume;
- (f) "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment;
- (g) "Prepared food" means:
1. Food sold in a heated state or heated by the retailer;
 2. Two (2) or more food ingredients mixed or combined by the retailer for sale as a single item except food that is only cut, repackaged, or pasteurized by the retailer, eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of the FDA Food Code so as to prevent food-borne illnesses; or
 3. Food sold with eating utensils provided by the retailer, including plates, knives, forks, spoons, glasses, cups, napkins, or straws;
- (h) Notwithstanding paragraph (g) of this subsection, "prepared food" shall not include the following items if sold without eating utensils provided by the seller:
1. Food sold by a seller whose proper primary North American Industry Classification System classification is manufacturing in sector 311, except subsector 3118; or
 2. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danishes, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
- (4) Notwithstanding the provisions of subsection (1) of this section, "food and food ingredients" sold through vending machines, **or** nonmechanical self-service vending systems, ~~or by street vendors~~ shall be subject to the tax imposed by this chapter.

Section 11. KRS 139.781 is amended to read as follows:

As used in KRS 139.780 to 139.795:

- (1) "**SSUTA** agreement" means the streamlined sales and use tax agreement;
- (2) "Certified automated system" means software certified jointly by the states that are signatories to the **SSUTA** agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;
- (3) "Certified service provider" means an agent certified jointly by the states that are signatories to the **SSUTA** agreement to perform all of the seller's sales tax functions;

- (4) *"Governing board" means a group of representatives from each member state that has the authority and responsibility for the administration and operation of the SSUTA agreement;*
 - (5) *"Member state" means a state that is found to be in compliance with the SSUTA agreement and that has made the necessary changes to statutes, rules, regulations, or other authorities necessary to bring the state into compliance and those changes are currently in effect;*
 - (6) *"Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit the tax on its own purchases;*
 - (7) *"Model 2 seller" means a seller that has selected a certified service provider to perform a part of its sales and use tax functions, but retains responsibility for remitting the tax;*
 - (8) *"Model 3 seller" means a seller that:*
 - (a) *Has sales in at least five (5) member states;*
 - (b) *Has total annual sales of at least five hundred million dollars (\$500,000,000);*
 - (c) *Has a proprietary system that calculates the amount of tax due each jurisdictions; and*
 - (d) *Has entered into a performance agreement with the member states that establishes a tax performance standard for the seller.*
- For purposes of this subsection, a seller shall include an affiliated group of sellers using the same proprietary system;*
- (9) *"Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity;*
 - (10) *"Product-based exemption" means an exemption based on the description of the product, and not based on who purchases the product or how the purchaser intends to use the product;*
 - ~~(11)(5)~~ *"Sales tax" means the tax levied under KRS 139.200;*
 - ~~(12)(6)~~ *"Seller" means any person making sales, leases, or rentals of personal property or services;*
 - ~~(13)(7)~~ *"State" means any state of the United States, ~~and~~ the District of Columbia, and the Commonwealth of Puerto Rico; ~~and~~*
 - (14) *"Use-based exemption" means an exemption based on a specific use of the product by the purchaser; and*
 - ~~(15)(8)~~ *"Use tax" means the tax levied under KRS 139.310.*

Section 12. KRS 139.795 is amended to read as follows:

- (1) (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. ~~[As the seller's agent,]~~
- (b) The certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller, except ***when the liability for not collecting the sales or use taxes results from the certified service provider's reliance on software certified by the state*** ~~[as set out in this section]~~. ***Relief from liability shall not be granted if the certified service provider has incorrectly classified an item or transaction into a product-based exemption certified by the state, except when the item or transaction is classified based upon the individual listing of items or transactions within a product definition approved by the governing board or the member state.***
- (c) ***A person that is responsible for the certified automated system is responsible for the functioning of system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system.***
- (2) (a) A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud; ~~[-]~~
- (b) In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider; ***and*** ~~[-]~~

- (c) A seller is subject to audit for transactions not processed by the certified service provider.
- (3) The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.
- (4) *A model 2 seller shall be relieved of liability for not collecting sales and use taxes if the liability resulted from the model 2 seller's reliance on software previously certified by the state. Relief from liability shall not be granted if the certified service provider has incorrectly classified an item or transaction into a product-based exemption certified by the state, except when the item or transaction is classified based upon the individual listing of items or transactions with a product definition approved by the governing board or the member state.*
- (5)
 - (a) *The department shall notify the certified service provider or model 2 seller if an item or transaction has been incorrectly classified as to its taxability;*
 - (b) *The certified service provider of a model 2 seller shall have ten (10) days to revise the classification after the receipt of notice; and*
 - (c) *Upon expiration of the ten (10) days, the certified service provider or the model 2 seller shall be liable for the failure to collect the amount of sales or use taxes due and owing.*
- ~~[(2) A person that provides a certified automated system is responsible for the functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.]~~
- ~~[(3)]~~ (6) ~~A model 3 seller that has a proprietary system for determining the amount of tax due on transactions and has signed a performance agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.~~

Section 13. KRS 136.602 is amended to read as follows:

As used in KRS 136.600 to 136.660:

- (1) "Cable service" means the provision of video, audio, or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of the video or other programming service, regardless of whether the programming is transmitted over facilities owned or operated by the provider or by one (1) or more other communications service providers. Included in this definition are basic, extended, and premium service, pay-per-view service, digital or other music services, and other similar services;
- (2) "Communications service" means the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber-optic, or similar medium or method now in existence or later devised.
 - (a) "Communications service" includes but is not limited to:
 - 1. Local and long-distance telephone services;
 - 2. Telegraph and teletypewriter services;
 - 3. Prepaid calling services, and postpaid calling services;
 - 4. Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;
 - 5. Channel services involving a path of communications between two (2) or more points;
 - 6. Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;
 - 7. Caller ID services, *ring tones*, voice mail and other electronic messaging services;
 - 8. Mobile telecommunications service as defined in 4 U.S.C. sec. 124(7); and
 - 9. Voice over Internet Protocol (VOIP);

- (b) "Communications services" do not include information services, cable service, or satellite broadcast and wireless cable service;
- (3) "Department" means the Department of Revenue;
- (4) "End user" means the person who utilized the multichannel video programming service. In the case of an entity, "end user" means the individual who used the service on behalf of the entity;
- (5) "Engaged in business" means:
 - (a) Having any employee, representative, agent, salesman, canvasser, or solicitor operating in this state, under the authority of the provider, its subsidiary, or related entity, for the purpose of selling, delivering, taking orders, or performing any activities that help establish or maintain a marketplace for the provider;
 - (b) Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or any other related entity, agent or representative, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business;
 - (c) Having real or tangible personal property in this state;
 - (d) Providing communications service by or through a customer's facilities located in this state;
 - (e) Soliciting orders from residents of this state on a continuous, regular, or systematic basis in which the solicitation of the order, placement of the order by the customer or payment of the order utilizes the services of any financial institution, communications system, radio or television station, cable service, direct broadcast satellite or wireless cable service, print media, or other facility or service located in this state; or
 - (f) Soliciting orders from residents of this state on a continuous regular, systematic basis if the provider benefits from an agent or representative operating in this state under the authority of the provider to repair or service tangible personal property sold by the retailer;
- (6) "Gross revenues" means all amounts received in money, credits, property, or other money's worth in any form, by a provider for furnishing multichannel video programming service or communications service in this state excluding amounts received from:
 - (a) Charges for Internet access as **defined**~~[provided]~~ in ~~the federal Internet Tax Nondiscrimination Act,~~ 47 U.S.C. sec. 151; and
 - (b) Any excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local political subdivision upon the purchase, sale, use, or other consumption of communications services or multichannel video programming services that is permitted or required to be added to the sales price of the communications service or multichannel video programming service. This exclusion does not include any amount that the provider has retained as a reimbursement for collecting and remitting the tax to the appropriate taxing jurisdiction in a timely manner;
- (7) "In this state" means within the exterior limits of the Commonwealth of Kentucky and includes all territory within these limits owned by or ceded to the United States of America;
- (8) "Multichannel video programming service" means cable service and satellite broadcast and wireless cable service;
- (9) "Person" means and includes any individual, firm, corporation, joint venture, association, social club, fraternal organization, general partnership, limited partnership, limited liability partnership, limited liability company, nonprofit entity, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit;
- (10) "Place of primary use" means the street address where the end user's use of the multichannel video programming service primarily occurs;
- (11) "Political subdivision" means a city, county, urban-county government, consolidated local government, or charter county government;
- (12) "Provider" means any person receiving gross revenues for the provision of multichannel video programming service or communications service in this state;

- (13) "Purchaser" means the person paying for multichannel video programming service;
- (14) "Resale" means the purchase of a multichannel video programming service by a provider required to collect the tax levied by KRS 136.604 for sale, or incorporation into a multichannel video programming service for sale, including but not limited to:
- (a) Charges paid by multichannel video programming service providers for transmission of video or other programming by another provider over facilities owned or operated by the other provider; and
 - (b) Charges for use of facilities for providing or receiving multichannel video programming services;
- (15) "Retail purchase" means any purchase of a multichannel video programming service for any purpose other than resale;
- (16) ***"Ring tones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication;***
- (17) "Sale" means the furnishing of a multichannel video programming service for consideration;
- ~~(18)~~~~(17)~~ (a) "Sales price" means the total amount billed by or on behalf of a provider for the sale of multichannel video programming services in this state valued in money, whether paid in money or otherwise, without any deduction on account of the following:
- 1. Any charge attributable to the connection, movement, change, or termination of a multichannel video programming service; or
 - 2. Any charge for detail billing;
- (b) "Sales price" does not include any of the following:
- 1. Charges for installation, reinstallation, or maintenance of wiring or equipment on a customer's premises;
 - 2. Charges for the sale or rental of tangible personal property;
 - 3. Charges for billing and collection services provided to another multichannel video programming service provider;
 - 4. Bad check charges;
 - 5. Late payment charges;
 - 6. Any excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local political subdivision, upon the purchase, sale, use, or consumption of any multichannel video programming service, that is permitted or required to be added to the sales price of the multichannel video programming service; or
 - 7. Internet access as ***defined***~~provided~~ in ~~the federal Internet Tax Nondiscrimination Act,~~ 47 U.S.C. sec. 151;
- ~~(19)~~~~(18)~~ "Satellite broadcast and wireless cable service" means point-to-point or point-to-multipoint distribution services that include, but are not limited to, direct broadcast satellite service and multichannel multipoint distribution services, with programming or voice transmitted or broadcast by satellite, microwave, or any other equipment directly to the purchaser. Included in this definition are basic, extended, and premium service, pay-per-view service, digital or other music services, two (2) way service, and other similar services;
- ~~(20)~~~~(19)~~ "School district" means a school district as defined in KRS 160.010 and 160.020; and
- ~~(21)~~~~(20)~~ "Special district" means a special district as defined in KRS 65.005(1)(a) that currently levies on any provider or its customers the public service corporation property tax under KRS 136.120.

Section 14. KRS 136.616 is amended to read as follows:

- (1) A tax is hereby imposed on the gross revenues received by all providers.
- (2) The tax rate shall be:
 - (a) Two and four-tenths percent (2.4%) of the gross revenues received for the provision of multichannel video programming service provided to a person whose place of primary use is in this state, billed on or after January 1, 2006; and

- (b) One and three-tenths percent (1.3%) of the gross revenues received for the provision of communications services, as sourced under the provisions of *Section 15 of this Act* ~~[KRS 139.105]~~, billed on or after January 1, 2006.
- (3) The provider shall not collect the tax directly from the purchaser or separately state the tax on the bill to the purchaser.
- (4) (a) The tax imposed by this section shall apply to all providers except a municipal utility. "Municipal utility" as used in this section means a utility owned, operated, and controlled directly or indirectly by a city of the first, second, third, fourth, fifth or sixth class.
- (b) To the extent that the provisions of KRS Chapter 279 are inconsistent with KRS 136.600 to 136.660, KRS 136.600 to 136.660 shall control.

SECTION 15. A NEW SECTION OF KRS 136.600 TO 136.660 IS CREATED TO READ AS FOLLOWS:

- (1) *For purposes of KRS 136.600 to 136.660 the retailer shall source communications services as follows:*
 - (a) *A sale of mobile telecommunications services, other than air-to-ground radiotelephone service and prepaid wireless calling service, shall be sourced to the customer's or other purchaser's place of primary use;*
 - (b) *A sale of post-paid calling service shall be sourced to the origination point of the telecommunications signal as first identified by either the retailer's telecommunications system or information received by the retailer from its service provider, where the system used to transport the signals is not that of the retailer;*
 - (c) *A sale of prepaid calling service or a sale of a prepaid wireless calling service shall be sourced as follows:*
 - 1. *Over the counter. The sale is sourced to the business location of the seller;*
 - 2. *Delivery to a specified address. The sale is sourced to the specified address when a purchaser or purchaser's donee receives the service at a location specified by the purchaser; or*
 - 3. *Delivery address unknown. When the retailer does not know the address where the service is received, the sale is sourced to the first address listed in this paragraph that is known to the retailer:*
 - a. *The address of the purchaser available from the business records of the retailer;*
 - b. *The billing address of the purchaser;*
 - c. *The address from which the service was provided; or*
 - d. *In the case of a sale of prepaid wireless calling service, the location associated with the mobile telephone number.*
 - (d) *A sale of a private communications service shall be sourced as follows:*
 - 1. *Service for a separate charge related to a customer channel termination point shall be sourced to each level of jurisdiction in which the customer channel termination point is located.*
 - 2. *Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.*
 - 3. *Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of channel are separately charged shall be sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.*
 - 4. *Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed shall be sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.*

(e) *A sale of other communications services :*

1. *Sold on a call-by-call basis shall be sourced based on the taxing jurisdiction where the call either originates or terminates and in which the service address is also located; or*
2. *Sold on a basis other than a call-by-call basis shall be sourced to the customer's or other purchaser's place of primary use.*

(2) *For purposes of this section:*

- (a) *"Air-to-ground radiotelephone service" has the same meaning as in Section 3 of this Act;*
- (b) *"Call-by-call basis" means any method of charging for communications services where the price is measured by individual calls;*
- (c) *"Communications channel" has the same meaning as in Section 3 of this Act;*
- (d) *"Customer" has the same meaning as in Section 3 of this Act;*
- (e) *"Customer channel termination point" has the same meaning as in Section 3 of this Act;*
- (f) *"Home service provider" has the same meaning as in Section 3 of this Act;*
- (g) *"Post-paid calling service" means a communications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number not associated with the origination or termination of the communications service. A post-paid calling service includes a communications service, except a prepaid wireless calling service, that would be a prepaid service except that it is not exclusively a communications service.*
- (h) *"Prepaid calling service" means the right to access exclusively communications services, which are paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.*
- (i) *"Prepaid wireless calling service" means a communications service that:*
 1. *Provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services;*
 2. *Must be paid for in advance; and*
 3. *Is sold in predetermined units of dollars of which the number declines with use in a known amount.*
- (j) *"Private communications service" means a communications service that entitles the customer or other purchaser to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of a channel or channels; and*
- (k) *"Service address" has the same meaning as in Section 3 of this Act.*

Section 16. KRS 136.620 is amended to read as follows:

- (1) The taxes imposed by KRS 136.604 and 136.616 are due and payable monthly and shall be remitted on or before the twentieth day of the next succeeding calendar month.
- (2) On or before the twentieth day of each month, every provider shall file a return for the preceding month with the department in the form prescribed by the department, together with payment of any tax due. The department may allow a provider subject to the taxes imposed under KRS 136.604 and 136.616 to file a single return reporting tax liabilities under both taxes for each reporting period.
- (3) The return shall show the:
 - (a) Gross revenues received subject to the tax imposed under KRS 136.616;

- (b) Amount billed by the provider for multichannel video programming service subject to the tax imposed under KRS 136.604;
 - (c) Amount of the tax due under KRS 136.604 and 136.616; and
 - (d) Any other information as the department deems necessary for the proper administration of KRS 136.600 to 136.660.
- (4) In the case where the purchaser is liable for the payment of the tax under KRS 136.606(2), the purchaser shall file the return showing the total amount paid for multichannel video programming service that is subject to tax during the reporting period.
 - (5) The return shall be signed by the person required to file the return or a duly authorized agent.
 - (6) The person required to file the return shall deliver the return, together with a remittance of the amount of tax due, to the department.
 - (7) For the purpose of facilitating the administration, payment, or collection of the taxes levied under KRS 136.600 to 136.660, the department may permit or require returns to be filed or tax payments to be made other than as specifically required by the provisions of this section.
 - (8) For purposes of calculating the excise tax imposed under KRS 136.604, if tangible personal property normally subject to sales and use tax under KRS Chapter 139 is sold with multichannel video programming service as a single package for one (1) price, and the tangible personal property is necessary for the provision of the multichannel video programming service, the tax required to be collected by the provider shall be the tax imposed by KRS 136.604.
 - (9) For purposes of calculating the excise tax imposed under KRS 136.604, if communications services subject to sales and use tax under KRS Chapter 139 is sold with multichannel video programming service as a single package for one (1) price, *the portion of the sales price attributable to the communications services shall be subject to the excise tax unless the provider can identify, by reasonable and verifiable standards, the communications services from its books and records that are kept in the regular course of business for other purposes, including but not limited to nontax purposes* ~~the tax required to be collected by the provider shall be the sales and use tax under KRS Chapter 139~~.
 - (10) For purposes of calculating the gross revenues tax imposed under KRS 136.616, if communications service is sold with multichannel video programming service as a single package for one (1) price, the gross revenues shall be taxed at the rate of two and four-tenths percent (2.4%).
 - (11) For purposes of calculating the gross revenues tax imposed under KRS 136.616, if tangible personal property is sold with:
 - (a) Multichannel video programming service for one (1) price, the gross revenues shall be taxed at the rate of two and four-tenths percent (2.4%); and
 - (b) Communications service for one (1) price, the gross revenues shall be taxed at the rate of one and three-tenths percent (1.3%).

Section 17. KRS 160.6131 is amended to read as follows:

As used in KRS 160.613 to 160.617:

- (1) "Department" means the Department of Revenue.
- (2) "Communications service" *means the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber optic, or similar medium or method now in existence or later devised.*
 - (a) "Communications service" includes but is not limited to:
 - 1. *Local and long-distance telephone services;*
 - 2. *Telegraph and teletypewriter services;*
 - 3. *Postpaid calling services;*

4. *Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;*
 5. *Channel services involving a path of communications between two (2) or more points;*
 6. *Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;*
 7. *Caller ID services, ring tones, voice mail and other electronic messaging services;*
 8. *Mobile wireless telecommunications service and fixed wireless service as defined in Section 3 of this Act; and*
 9. *Voice over Internet Protocol (VOIP).*
- (b) *"Communications service" does not include any of the following if the charges are separately itemized on the bill provided to the purchaser:*
1. *Information services;*
 2. *Internet access as defined in 47 U.S.C. sec. 151;*
 3. *Installation, reinstallation, or maintenance of wiring or equipment on a customer's premises. This exclusion does not apply to any charge attributable to the connection, movement, change, or termination of a communications service;*
 4. *The sale of directory and other advertising and listing services;*
 5. *Billing and collection services provided to another communications service provider;*
 6. *Cable service, satellite broadcast, satellite master antenna television, and wireless cable service, including direct-to-home satellite service as defined in Section 602 of the federal Telecommunications Act of 1996;*
 7. *The sale of communications service to a communications provider that is buying the communications service for sale or incorporation into a communications service for sale, including:*
 - a. *Carrier access charges, excluding user access fees;*
 - b. *Right of access charges;*
 - c. *Interconnection charges paid by the provider of mobile telecommunications services or other communications providers;*
 - d. *Charges for the sale of unbundled network elements as defined in 47 U.S.C. sec. 153(29) on January 1, 2001, to which access is provided on an unbundled basis in accordance with 47 U.S.C. sec. 251(c)(3); and*
 - e. *Charges for use of facilities for providing or receiving communications service; and*
 8. *The sale of communications services provided to the public by means of a pay phone. [shall have the same meaning as provided in KRS 139.195 but does not include:]*
 9. ~~9.(a)~~ *Prepaid calling services and prepaid wireless calling service;*
 10. ~~10.(b)~~ *Interstate telephone service, if the interstate charge is separately itemized for each call; and*
 11. ~~11.(c)~~ *If the interstate calls are not itemized, the portion of telephone charges identified and set out on the customer's bill as interstate as supported by the provider's books and records.*
- (3) "Gross cost" means the total cost of utility services including the cost of the tangible personal property and any services associated with obtaining the utility services regardless from whom purchased.
 - (4) "Gross receipts" means all amounts received in money, credits, property, or other money's worth in any form, as consideration for the furnishing of utility services.
 - (5) "Utility services" means the furnishing of communications services, electric power, water, and natural, artificial, and mixed gas.

- (6) "Cable service" has the same meaning as provided in KRS 136.602.
- (7) "Satellite broadcast and wireless cable service" has the same meaning as provided in KRS 136.602.
- (8) ***"Ring tones" has the same meaning as provided in Section 13 of this Act.***

Section 18. KRS 160.6151 is amended to read as follows:

For purposes of administering the taxes authorized by KRS 160.613 and 160.614 relating to the sourcing of communications services and the rights of customers, the provisions of ***Sections 13 and 15 of this Act***~~KRS 139.105(2), 139.195,~~ and ***KRS 139.775*** shall apply.

Section 19. KRS 139.260 is amended to read as follows:

For the purpose of the proper administration of this chapter and to prevent evasion of the duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that all gross receipts and all tangible personal property sold by any person for delivery in this state are subject to the tax until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is either:

- (1) Purchased for resale according to the provisions of KRS 139.270;
- (2) Purchased through a properly executed certificate of exemption in accordance with KRS 139.270;
- (3) Purchased according to regulations of the Department of Revenue governing a direct pay authorization; or
- (4) Purchased under a form issued pursuant to KRS~~139.776 or~~ 139.777.

Section 20. KRS 139.471 is amended to read as follows:

Excluded from the additional taxes imposed by KRS 139.200 ~~and~~ 139.310~~, and 139.320~~ are gross receipts:

- (1) Derived from sales of and the storage, use, or other consumption of tangible personal property purchased for use in the performance of a lump-sum, fixed fee contract executed on or before March 9, 1990;
- (2) Derived from sales made under fixed price sales contracts executed on or before March 9, 1990, provided the contract specifies a five percent (5%) sales tax rate; and
- (3) Derived from a lease or rental agreement entered into on or before March 9, 1990.

Section 21. KRS 139.783 is amended to read as follows:

It is the intent and purpose of the General Assembly in enacting KRS 139.780 to 139.795 to encourage and increase voluntary compliance with Kentucky's sales and use tax law by entering into ***the SSUTA***~~an~~ agreement with one (1) or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

Section 22. KRS 139.785 is amended to read as follows:

- (1) The department is authorized and directed to enter into the ***SSUTA*** agreement with one (1) or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. To further the ***SSUTA*** agreement, the department is authorized to act jointly with other states that are members of the ***SSUTA*** agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.
- (2) The department is further authorized to take other actions reasonably required to implement the provisions set forth in KRS 139.780 to 139.795. Other actions authorized by this section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services to further the cooperative agreement. Notwithstanding the provisions of KRS Chapter 13A, the department may issue educational bulletins to the extent necessary to enhance the understanding of and compliance with terms of the agreement.
- (3) The commissioner of the Department of Revenue or the commissioner's designee, the state budget director or the director's designee, and two (2) legislators are authorized to represent this state before the other states that are signatories to the ***SSUTA*** agreement. One (1) member of the Senate shall be appointed by the President of

the Senate, and one (1) member of the House of Representatives shall be appointed by the Speaker of the House of Representatives.

Section 23. KRS 139.787 is amended to read as follows:

No provision of the *SSUTA* agreement authorized by KRS 139.780 to 139.795 in whole or in part invalidates or amends any provision of the law of this state. Adoption of the *SSUTA* agreement by the state does not amend or modify any law of this state. Implementation of any condition of the *SSUTA* agreement in this state, whether adopted before, during, or after membership of this state in the *SSUTA* agreement, shall be by action of this state.

Section 24. KRS 139.789 is amended to read as follows:

The department shall not enter into the *SSUTA* agreement unless the *SSUTA* agreement requires each state to abide by the following requirements:

- (1) The *SSUTA* agreement shall set restrictions to achieve more uniform state rates through the following:
 - (a) Limiting the number of state rates;
 - (b) Limiting the application of maximums on the amount of state tax that is due on a transaction; and
 - (c) Limiting the application of thresholds on the application of state tax.
- (2) The *SSUTA* agreement shall establish uniform standards for the following:
 - (a) The sourcing of transactions to taxing jurisdictions;
 - (b) The administration of exempt sales;
 - (c) The allowances a seller can take for bad debts; and
 - (d) Sales and use tax returns and remittances.
- (3) The *SSUTA* agreement shall require states to develop and adopt uniform definitions of sales and use tax terms. The definitions shall enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.
- (4) The *SSUTA* agreement shall provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.
- (5) The *SSUTA* agreement shall provide that registration with the central registration system and the collection of sales and use taxes in the signatory state will not be used as a factor in determining whether the seller has nexus with a state for any tax.
- (6) The *SSUTA* agreement shall provide for a reduction of the burdens of complying with local sales and use taxes through the following:
 - (a) Restricting variances between the state and local tax bases;
 - (b) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;
 - (c) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and
 - (d) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.
- (7) The *SSUTA* agreement shall outline any monetary allowances that are to be provided by the states to sellers or certified service providers.
- (8) The *SSUTA* agreement shall require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance under the laws of the member state, with all provisions of the *SSUTA* agreement while a member.
- (9) The *SSUTA* agreement shall require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

- (10) The *SSUTA* agreement shall provide for the appointment of an advisory council of private sector representatives and an advisory council of non-member state representatives to consult with in the administration of the *SSUTA* agreement.

Section 25. KRS 139.791 is amended to read as follows:

The *SSUTA* agreement authorized by KRS 139.780 to 139.795 is an accord among individual, cooperating sovereigns in furtherance of their governmental functions. The *SSUTA* agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

Section 26. KRS 139.793 is amended to read as follows:

- (1) The *SSUTA* agreement authorized by KRS 139.780 to 139.795 binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the *SSUTA* agreement. Any benefit to a person other than a state is established by the law of the state and the other member states and not by the terms of ~~the *SSUTA*~~ *this* agreement.
- (2) Consistent with subsection (1) of this section, no person shall have any cause of action or defense under the *SSUTA* agreement or by virtue of this state's approval of the *SSUTA* agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the *SSUTA* agreement.
- (3) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the *SSUTA* agreement.

Section 27. KRS 139.794 is amended to read as follows:

- (1) According to the provisions of the *SSUTA* agreement, a seller who registers under the terms of the *SSUTA* agreement to pay or to collect and remit applicable sales and use tax on sales made in Kentucky shall be exempt from assessment for uncollected or unpaid sales or use tax together with penalty and interest for sales made during the period the seller was not registered in Kentucky if:
 - (a) The seller was not registered in Kentucky in the twelve (12) month period preceding the effective date of Kentucky's participation in the *SSUTA* agreement; and
 - (b) The seller registers in Kentucky within twelve (12) months of the effective date of Kentucky's participation in the *SSUTA* agreement.
- (2) The exemption is not available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved, including any related administrative and judicial processes.
- (3) The exemption is not available for sales or use taxes already paid or remitted to the state or to taxes collected by the seller.
- (4) The exemption is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, if the seller remains registered and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six (36) months. During this thirty-six (36) month period, the statute of limitations shall be suspended for the seller remaining in compliance with registration and payment requirements. Failure to meet these terms will result in a revocation of the exemption.
- (5) This exemption shall apply to sales or use taxes due from a seller in its capacity as a seller and shall not apply to sales and use taxes due from a seller in its capacity as a buyer.

Section 28. KRS 139.990 is amended to read as follows:

- (1) Any person who executes:
 - (a) A resale certificate for property in accordance with KRS 139.270 knowing at the time of purchase that such property is not to be resold by him in the regular course of business, for the purpose of evading the tax imposed under this chapter;

- (b) An exemption certificate for property in accordance with KRS 139.270, knowing at the time of the purchase that he is not engaged in an occupation that would entitle him to exemption status or any person who does not intend to use the property in the prescribed manner;
- (c) A direct pay authorization for property not in accordance with 103 KAR 31.030; or
- (d) ~~A [An MPU exemption form or] Direct Mail Form issued not in accordance with the provisions of KRS { 139.776 or} 139.777;~~

shall be guilty of a Class B misdemeanor.

- (2) A person who engages in business as a seller in this state without a permit or permits as required by this chapter or after a permit has been suspended, and each officer of any corporation which is so engaged in business, shall be guilty of a Class B misdemeanor.
- (3) Any person who violates any of the provisions of KRS 139.220, 139.380, or 139.700 shall be guilty of a Class B misdemeanor.
- (4) Any person who violates any of the regulations promulgated by the department shall be guilty of a Class B misdemeanor.
- (5) Any person, business, or motion picture production company falsifying expenditure reports, applications, or any other statements made in securing the tax credit afforded by KRS 139.5382 to 139.5386 shall be guilty of a Class D felony. Such motion picture production companies shall be denied any tax credit to which they would otherwise be entitled, and shall be prohibited from applying for any future credit afforded by KRS 139.5382 to 139.5386.

Section 29. The following KRS sections are repealed:

139.320 Use tax on machinery brought into state for construction project.

139.776 Multiple points of use exemption form.

Section 30. This Act takes effect July 1, 2007.

Approved April 6, 2007.