

CHAPTER 70

(SB 196)

AN ACT relating to parks and tourism.

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

➔Section 1. KRS 148.795 is amended to read as follows:

(1) *As used in this section:*

- (a) *"Agreement" means a recreational land use agreement where at least one (1) party is a governmental entity as defined in this section;*
- (b) *"Government" or "governmental entities" means any government entity of the Commonwealth, including state government agency, city, county, urban-county government, consolidated local government, unified local government, or charter county;*
- (c) *"Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery when attached to the realty;*
- (d) *"Owner" means a private individual, corporation, or government who possesses a fee interest in the land; and*
- (e) *"Recreational purpose" includes but is not limited to any of the following, or any combination thereof: hunting, fishing, rock climbing, swimming, boating, camping, picnicking, hiking, bicycling, horseback riding, pleasure driving, nature study, waterskiing, winter sports, all-terrain vehicle riding, and viewing or enjoying historical, archaeological, scenic, or scientific sites.*

(2) The Kentucky Recreational Trails Authority is hereby established and attached to the *Office of the Secretary* [~~Department of Tourism~~], Commerce Cabinet, for the purpose of planning and implementing programs to expand tourism opportunities for off-road activities that are pertinent to nonmotorized and motorized vehicle use, including *but not limited to* pedestrians, bicycles, mountain bicycles, horses, all-terrain vehicles (ATVs), and off-highway vehicles (OHVs), on designated lands in Kentucky. Membership of the authority shall consist of the following:

- (a) A chairman, *selected from its members* [~~who shall be an employee of the Department of Tourism prior to his appointment~~], to be designated by the *Governor* [~~commissioner of the Department of Tourism~~]; ~~and~~
- (b) ~~Initial~~ Membership shall include the *following* [~~eleven (11)~~] members:
 - 1. *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. The initial term of one (1) member shall expire one (1) year after the date of appointment. The initial term of the other member shall expire two (2) years after the date of appointment;*
 - 2. *One (1) member of the League of Kentucky Sportsmen, appointed by the Governor. The initial term of this member shall expire one (1) year after the date of appointment;*
 - 3. *One (1) member of the Kentucky Council of Area Development Districts, appointed by the Governor. The initial term of this member shall expire four (4) years after the date of appointment;*
 - 4. *Two (2) members selected from ATV associations, with consideration given to geographic diversity. The initial term of one (1) of these members shall expire two (2) years after the date of appointment and the initial term of the other member shall expire three (3) years after the date of appointment;*
 - 5. *Two (2) members representing Kentucky Farm Bureau, with consideration to the eastern and western part of the state. The initial term of one (1) member shall expire two (2) years after the date of appointment and the initial term of the other member shall expire four (4) years after the date of appointment; and*

6. *Two (2) members representing the coal industry, with consideration to the eastern and western part of the state. The initial term of one (1) member shall expire two (2) years after the date of appointment and the initial term of the other member shall expire four (4) years after the date of appointment;*
- (c) ~~Seven (7)~~ *[who shall serve for the remainder of their terms. Two (2)]* additional members ~~[, whose terms shall expire on the same date as the eleven (11) initial commission members,]~~ shall be appointed by the Governor from the following groups:
1. One (1) member shall be *chosen* from a Kentucky bicycling organization that is affiliated with either the League of American Bicyclists, the United States Cycling Federation, or the International Mountain Bicycling Association. *The initial term of this member shall expire three (3) years after the date of appointment;* ~~[and]~~
 2. One (1) member shall be from a Kentucky equine organization that has trail riding as its primary focus. *The initial term of this member shall expire one (1) year after the date of appointment;*
 3. *One (1) member shall be chosen from a state or national hiking or backpacking organization. The initial term of this member shall expire two (2) years after the date of appointment;*
 4. *Two (2) members shall be chosen from five (5) persons, nominated in writing, by the Kentucky Horse Council. The initial term of one (1) of these members shall expire four (4) years after the date of appointment and the initial term of the other member shall expire two (2) years after the date of the appointment;*
 5. *One (1) member shall be chosen by the Governor from the public at large. The initial term of this member shall expire three (3) years after the date of appointment; and*
 6. *One (1) member shall be selected from among the county judge/executives of the Commonwealth. The initial term of this member shall expire two (2) years after the date of appointment;*
- (d) *Additionally, the following shall serve as members by virtue of their official positions:*
1. *The secretary of the Transportation Cabinet, or the secretary's designee;*
 2. *The secretary of the Commerce Cabinet, or the secretary's designee;*
 3. *The commissioner of the Department of Fish and Wildlife Resources, or the commissioner's designee;*
 4. *The secretary of the Justice and Public Safety Cabinet, or the secretary's designee;*
 5. *The secretary of the Environmental and Public Protection Cabinet, or the secretary's designee; and*
 6. *The Commissioner of the Department of Agriculture, or the commissioner's designee; and*
- (e) Upon the expiration of the terms of the initial members described in ~~paragraphs~~ ~~[paragraph]~~ (b) and (c) of this subsection, the Governor shall appoint thirteen (13) members of the public *in such a manner as to ensure equal representation of motorized and nonmotorized use of trails and in accordance with the requirements of paragraphs (b) and (c) of this subsection* ~~[representing various interests within the Commonwealth]. Any vacancy on the authority shall be filled by the Governor for the unexpired term.~~
- (3) ~~(2)~~ (a) Each appointed member shall serve for a term of four (4) years. *Sitting members shall be eligible to succeed themselves.*
- (b) Any member may be removed from his or her appointment by the Governor for cause.
- (c) Appointed members shall be reimbursed for travel costs incurred in attending meetings, which shall be paid from the funds of the Department of Tourism and in compliance with the Commerce Cabinet's procedures for travel and reimbursement.

- ~~(4)(3)~~ (a) The chairman shall set the agenda, place, and time of meetings, which shall be held a minimum of two (2) times per year and conducted in accordance with the Open Meetings Act, KRS 61.805 to 61.850.
- (b) A quorum for all meetings shall consist of seven (7) of the ~~appointed~~ members.
- (c) The chairman shall be a nonvoting member, except in cases of a tie vote, in which case, the chairman may cast the deciding vote.
- (5) *An agreement as defined in subsection (1) of this section may be entered into by any owner or owners and any governmental entities as defined in paragraph (b) of subsection (1) of Section 1 of this Act.*
- (a) *The agreement shall be a contractual arrangement that authorizes the public to utilize the owner's land for a recreational purpose. The allowable recreational purpose or purposes may include but are not limited to all-terrain vehicle riding, public hunting, nature conservation, biking, rock climbing, hiking, and horseback trail riding and may be limited in scope by the terms of the agreement.*
- (b) *The agreement may specify that the government entity or entities may be responsible for the maintenance and upkeep of the land.*
- (c) *The provisions of KRS 411.190 shall apply to public use of lands for recreational purposes authorized under an agreement entered into pursuant to this section.*
- (d) *Unless otherwise agreed by the parties, the agreement may be terminated by either party at any time for any reason if thirty (30) days' notice is given.*
- (6) *An agreement executed pursuant to this section, or the use of land under an agreement created pursuant to this section, shall not:*
- (a) *Create in any user any interest in the property;*
- (b) *Ripen into a claim of adverse possession;*
- (c) *Alter the land or status of the land to make it unsuitable for mining pursuant to KRS 350.610; or*
- (d) *Cause a denial of a mining permit pursuant to KRS 350.085 or other statutes or regulations of the Commonwealth of Kentucky or any political subdivision thereof.*
- (7) *In accordance with the purpose and limitations specified in this section, the governmental entities may:*
- (a) *Construct, develop, manage, maintain, operate, improve, renovate, finance, or otherwise provide for recreational activities and facilities on designated public lands and private lands where owners have voluntarily entered into use agreements with the authority or government.*
- (b) *Charge for a general use permit to access the lands for off-road activities as described in subsection (5) of this section that shall be valid for not less than thirty (30) days.*
- (8) *The Kentucky Recreational Trails Authority may accept, acquire, dispose of, or hold real or personal property, and any interest therein, by deed, grant, loan, gift, devise, bequest, lease, license, easement, or transfer from any state or federal government agency, or from any person, corporation or other entity, for the purpose of public use.*
- (9) *All proceeds derived from the sale of a general use permit pursuant to subsection (7)(b) of this section, or any proceeds derived from property identified in subsection (8) of this section, shall be paid to the State Treasurer, who shall deposit the proceeds in a revolving fund to carry out the purposes of this chapter. The fund shall be administered by the Commerce Cabinet. Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.*
- (10) *The Commerce Cabinet may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A in order to carry out the provisions of this section.*

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

- (1) *The Kentucky Recreational Trails Authority is charged with responsibility for developing and implementing a strategy to increase responsible and legal recreational activity by all types of recreational users, including all-terrain vehicles (ATV) and off-highway vehicles (OHV) on private land. The authority shall include an*

informational campaign directed toward in-state and out-of-state recreational users that addresses the implications of trespass, vandalism, and littering.

- (2) *A person shall not enter upon the lands of private landowners in the absence of an agreement as defined in Section 1 of this Act, without the oral or written permission of the landowner, tenant, or person who has the authority to grant permission.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to the powers accorded under KRS 150.090, any conservation officer appointed under KRS Chapter 150 may enforce the provisions of Sections 1 and 2 of this Act.*
- (2) *Any program of enforcement for Sections 1 and 2 of this Act shall be through a memorandum of agreement between the department and the Commerce Cabinet. The department may, after entering into a memorandum of agreement with the Commerce Cabinet, promulgate administrative regulations in accordance with KRS Chapter 13A to carry out the enforcement of Sections 1 and 2 of this Act.*

➔Section 4. The Kentucky Recreational Trails Authority (KRTA) is hereby directed to study the impacts of, and ways to significantly reduce, illegal trespass by all-terrain vehicles and off-highway vehicles, with an emphasis on private farmland. The KRTA shall also produce recommendations for increased, coordinated enforcement of current and proposed law that could significantly reduce trespass and damage to private landowners. By December 15, 2008, the KRTA shall submit to the Legislative Research Commission for referral to the appropriate committee or committees, a final report, with any recommendations for proposed legislation, on its implementation of the requirements provided for in this section.

Signed by Governor April 11, 2008.